NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

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

Editor's Note: The following Notices of Final Rulemaking were reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 3210.) The Governor's Office authorized the notices to go through the rulemaking process on January 31, 2014.

[R14-188]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) — **Rulemaking Action**

R9-22-101	Amend
R9-22-201	Amend
R9-22-202	Amend
R9-22-210.01	Amend
R9-22-217	Amend
R9-22-1201	Amend
R9-22-1202	Amend
R9-22-1203	Amend
R9-22-1204	Amend
R9-22-1205	Amend
R9-22-1206	Repeal
R9-22-1207	Amend

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 36-2903.01(F)

Implementing statute: A.R.S. §§ 36-2903.01(F), 36-2907, 36-2907(F) and Laws 2013, First Special Session, Chapter 10, §13.

3. The effective date of the rule:

January 4, 2015

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 20 A.A.R. 2183, August 15, 2014

Notice of Proposed Rulemaking: 20 A.A.R. 2149, August 15, 2014

5. The agency's contact person who can answer questions about the rulemaking:

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6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

HB 2634 (Laws 2011, Chapter 96) requires the Arizona Department of Health Services (ADHS) to reduce monetary or regulatory costs on persons or individuals receiving behavioral health services, streamline the regulation process, and facilitate licensure of integrated health programs that provide both behavioral and physical health services.

The Administration cross references ADHS rules and must update its rules to correctly reference changes made by ADHS. In addition, changes recommended during a five-year review, report effective November 3, 2009, of these rules have also been made along with any technical changes required to make the rulemaking clear. Such as:

R9-22-1201 – Specify definitions that apply to this Article, and removing the authority references to statute in subsection (1) and (2).

R9-22-1202 – Clarification made to describe the Administration's responsibility in the provision of behavioral health services.

R9-22-1204 - Removed or Updated:

- Subsection (A), which defines behavioral health services, already exists in R9-22-1201 and R9-20-101.
- Subsection (B), describing medical necessity, can also be removed since it is defined in R9-22-101.
- Subsection (D), describing that EPSDT services include covered behavioral health services is also not needed since the requirement to provide behavioral health services to an EPSDT member is referred to in R9-22-213.
- Subsection (E), describing that experimental services are for purposes of research and not a behavioral health service can be removed since the same information is defined in R9-22-101 and described in R9-22-202.
- Subsection (F), describing gratuities as a non covered service can be removed since this provision is already addressed in R9-22-202.

R9-22-1205. - Removal of subsection (A)(2)(c) and (C)(5).

R9-22-1206 – Repealed since general requirements and standards for providers are covered under article 2 or article 5.

R9-22-1207 - Removed subsection (A) since this provision is addressed in contract.

Certain recommendations of changes made in the five-year review report approved in November 2009 were no longer applicable, such as:

R9-22-1201 - Clarification of the definition "respite" to state that respite is for unpaid caregivers was not made since respite could apply to either a paid or unpaid caregiver. In addition, the cross-reference for the term "client" to reference R9-20-101 was not made since the term "client" was no longer needed due to the new terms ADHS is using.

R9-22-1204 - Subsection (K) was not clarified with provisions of restriction and limitations applicable to TRBHA's because the restrictions and limitations apply to all behavioral health inpatient facilities and do not need to specify TRBHA.

R9-22-1206 – update to incorporations by reference were not made since this rule was repealed instead since the requirements are already explained under art 2 and art 5.

R9-22-1207 – The addition of language regarding to whom to submit a claim when a Third Party Administrator (TPA) is involved was not made because subsection (A)(6) and (A)(7) address to who and when to submit claim with a TPA.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did 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:

A study was not referenced or relied upon when revising the regulations.

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

Not applicable

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

The Administration anticipates minimal economic impact on the implementing agency, small businesses and consumers; because this rulemaking was made for clarification and technical changes required as a result of ADHS rule changes. The changes made in this proposed rulemaking are not substantive changes.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

No significant changes were made between the proposed rulemaking and the final rulemaking. The changes that were made were as a result of the public comments received and recommendations made by GRRC staff.

In response to comments received during the public comment period, the Administration made several clarifying changes, such as:

• In R9-22-201, the phrase "except as provided under R9-22-217" was removed from several definitions specific to members other than FES members as the cross-reference was unnecessary and confusing as it references services to FES members.
• In R9-22-210.01, references to "medical services" were changed to refer to "emergency behavioral health services" because this section is intended to relate to behavioral health services for FES members.
• In R9-22-1201 and R9-22-1205, references to a "behavioral health service agency" was changed to "a behavioral health facility" to conform to the terminology in the administrative rules for behavioral health licensure adopted by ADHS.
• R9-22-1204 was amended to make it grammatically correct.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The following comments were received as of the close of the comment period on September 15, 2014.

Item #	Rule Cite Line #	Comment From	Comment	Analysis/ Recommendation
1.	R9-22-101	Susan Watchman 08/13/14	R9-22-101(B) (Definitions) On page 19 of my printed copy, the definition of "Behavioral Health Professional "appears to have an incorrect reference to "A.A.C. R9-10-101, excluding subsection (g)." I cannot locate a "subsection (g)."	Subsection (g) is in the final filing of the ADHS rules effective July 1, 2014. See: http://www.azsos.gov/public_services/Register/2014/26/exempt.pdf
2.	R9-22-201	Susan Watchman 08/13/14	R9-22-201 (Scope of Service Related definitions) There are a series of definitions starting on page 25 and continuing on page 26 related to various aspects of emergency services. In each case the definition is restricted to "for a non-FES member" but goes onto say "except as provided under R9-22-217." R9-22-217 is the section that deals with services to FES members. As these definitions are all for non FES members by their express terms, the stated exception in each case is unnecessary. As written the language now reads, on essence (using one example): "Emergency behavioral health services for a non FES member" means, except for services to an FES member. . ."	Agreed, updated language.
3.	R9-22-210.01	Susan Watchman 08/13/14	R9-22-210.01(A)(9)(b): This is the section on Notification for emergency behavioral health services for FFS members. On page 32 it reads ". . . shall notify the Administration no later than 72 hours after a FFS member receiving emergency ***medical*** services presents. . . ." In this context, shouldn't it read "emergency ***behavioral*** services?" Also, it would be preferable use the same language as in (9)(a) above (regarding notification to ADHS or subcontractors) -- that is, "emergency inpatient behavioral health services," unless you intend that the notification to the Administration to encompass a broader range of "emergency" situations. Does the Administration, for example, want to be notified when patient present to the UPC? Use of different language infers different meaning and scope.	Agreed, updated language.

4.	R9-22-1201	Susan Watchman 08/13/14	R9-22-1201 (Definitions) (a) The definition of "agency" on page 35 states that it "means a behavioral health ***service agency***, a classification of a health care institution. . .. "To be consistent with the new ADHS regulations, I believe that should read "a behavioral health ***facility***. . .." "Facility" is the word used by ADHS licensing. (b) On page 37, the definition of "healthcare institution "is the same as in A.R.S. § 36-401. In other case where you lifted a definition from § 36-401 you did a simple cross reference. For consistency and legal clarity it should be the same here.	Agreed, updated R9-22-1201 definition of "agency" and "healthcare institution".
5.	R9-22-1204	Susan Watchman 08/13/14	R9-22-1204(A) (General Service Requirements) The editing turned this into an ungrammatical conglomerate of concepts. It should be revised.	Agreed, revised language.
6.	R9-22-1205	Susan Watchman 08/13/14	R9-22-1205(C) & (D) The old term "agency" should be revised to "facility."	Agreed, revised language.
7.	R9-22-1207	Susan Watchman 08/13/14	R9-22-1207 ((A)(1). The second/last sentence states "ADHS/DBHS shall require all ***service providers*** to submit encounters. . ." I believe this reference should be to ***ADHS/DBHS subcontractors***. Providers submit claims; it's the plans/RBHAs that submit encounters.	The Administration decided to strike subsection (A)(1) since this information is not required in rule, it is covered under statute A.R.S. §36-2904(G). In addition, A.R.S. § 41-1005 states that terms of contract are not required in rule. .

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

No other matters are applicable.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

Not applicable

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

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

ARTICLE 1. DEFINITIONS

Section
R9-22-101. Location of Definitions

ARTICLE 2. SCOPE OF SERVICES

Section
R9-22-201. Scope of Services-related Definitions
R9-22-202. General Requirements
R9-22-210.01. Emergency Behavioral Health Services for Non-FES Members
R9-22-217. Services Included in the Federal Emergency Services Program

ARTICLE 12. BEHAVIORAL HEALTH SERVICES

Section
R9-22-1201. ~~General Requirements~~ Definitions
R9-22-1202. ADHS, ~~and~~ Contractor, Administration and CRS Responsibilities
R9-22-1203. Eligibility for Covered Services
R9-22-1204. General Service Requirements
R9-22-1205. Scope and Coverage of Behavioral Health Services
R9-22-1206. ~~General Provisions and Standards for Service Providers~~ Repeal
R9-22-1207. General Provisions for Payment

ARTICLE 1. DEFINITIONS

R9-22-101. Location of Definitions

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

Definition	Section or Citation
"Accommodation"	R9-22-701
~~"Act"~~	~~R9-22-101~~
"Active treatment"	R9-22-1301
"ADHS"	R9-22-101
"Administration"	A.R.S. § 36-2901
"Adult behavioral health therapeutic home"	9 A.A.C. 10, Article 1
"Adverse action"	R9-22-101
"Affiliated corporate organization"	R9-22-101
"Aged"	42 U.S.C. 1382c(a)(1)(A) and R9-22-1501
"Agency"	R9-22-1201
"Aggregate"	R9-22-701
"AHCCCS"	R9-22-101
"AHCCCS inpatient hospital day or days of care"	R9-22-701
"AHCCCS registered provider"	R9-22-101
"Ambulance"	A.R.S. § 36-2201
~~"Ancillary department"~~	~~R9-22-701~~
"Ancillary service"	~~R9-22-701~~ R9-22-101
"Anticipatory guidance"	R9-22-201
"Annual enrollment choice"	R9-22-1701
"APC"	R9-22-701
~~"Appellant"~~	~~R9-22-101~~
"Applicant"	R9-22-101 or R9-22-301
"Application"	R9-22-101
"Assessment"	R9-22-1101 or R9-22-1201
"Assignment"	R9-22-101
"Attending physician"	R9-22-101 or R9-22-202
"Authorized representative"	R9-22-101

"Authorization"	~~R9-22-201~~ R9-22-202
"Auto-assignment algorithm"	R9-22-1701
"AZ-NBCCEDP"	R9-22-2001
~~"Baby Arizona"~~	~~R9-22-1401~~
"Behavior management services"	R9-22-1201
~~"Behavioral health adult therapeutic home"~~	~~R9-22-1201~~
"Behavioral health therapeutic home care services"	R9-22-1201
~~"Behavioral health evaluation"~~	~~R9-22-1201~~
~~"Behavioral health medical practitioner"~~	~~R9-22-1201~~
"Behavioral health paraprofessional"	R9-22-101
"Behavioral health professional"	~~A.A.C. R9-20-1201~~ R9-22-101
"Behavioral health recipient"	R9-22-201
"Behavioral health ~~service~~ services"	R9-22-1201
"Behavioral health technician"	~~A.A.C. R9-20-1201~~ R9-22-1201
"Benefit year"	R9-22-201
"BHS"	~~R9-22-1401~~ R9-22-301
"Billed charges"	R9-22-701
"Blind"	R9-22-1501
"Burial plot"	R9-22-1401
"Business agent"	R9-22-701 ~~and R9-22-704~~
"Calculated inpatient costs"	R9-22-712.07
"Capital costs"	R9-22-701
"Capped fee-for-service"	R9-22-101
"Caretaker relative"	R9-22-1401
"Case management"	R9-22-1201
"Case record"	R9-22-101
~~"Case review"~~	~~R9-22-101~~
"Cash assistance"	R9-22-1401
~~"Categorically eligible"~~	~~R9-22-101~~
~~"CCR"~~	~~R9-22-712~~
"Certified psychiatric nurse practitioner"	R9-22-1201
"Charge master"	R9-22-712
"Child"	R9-22-1503 ~~and R9-22-1603~~
"Children's Rehabilitative Services" or "CRS"	R9-22-101 or R9-22-301
"Chronic"	R9-22-1301
"Claim"	R9-22-1101
"Claims paid amount"	R9-22-712.07
"Clean claim"	A.R.S. § 36-2904
"Clinical oversight"	9 A.A.C. 10
~~"Clinical supervision"~~	~~R9-22-201~~
"CMDP"	R9-22-1701
"CMS"	R9-22-101
"Continuous stay"	R9-22-101
"Contract"	R9-22-101
"Contract year"	R9-22-101
"Contractor"	A.R.S. § 36-2901 or R9-22-210.01
"Copayment"	R9-22-701~~, R9-22-711 and R9-22-1603~~
"Cost avoid"	R9-22-1201
"Cost-To-Charge Ratio" or "CCR"	R9-22-701 or R9-22-712
"Court-ordered evaluation"	R9-22-1201
"Court-ordered pre-petition screening"	R9-22-1201
"Court-ordered treatment"	R9-22-1201
"Covered charges"	R9-22-701
"Covered services"	R9-22-101
"CPT"	R9-22-701
"Creditable coverage"	R9-22-2003 and 42 U.S.C. 300gg(c)
"Crisis services"	R9-22-1201
"Critical Access Hospital"	R9-22-701
~~"CRS"~~	~~R9-22-101~~

"CRS application"	R9-22-1301
"CRS condition"	R9-22-1301
"CRS provider"	R9-22-1301
"Cryotherapy"	R9-22-2001
"Customized DME"	R9-22-212
"Day"	R9-22-101 and R9-22-1101
"Date of the Notice of Adverse Action"	R9-22-1441
"DBHS"	R9-22-101
~~"DCSE"~~	~~R9-22-1401~~
"DCSS"	R9-22-301
~~"De novo hearing"~~	~~42 CFR 431.201~~
~~"Dentures" and "Denture services"~~	~~R9-22-201~~
"Department"	A.R.S. § 36-2901
"Dependent child"	A.R.S. § 46-101 or R9-22-1401
"DES"	R9-22-101
"Diagnostic services"	R9-22-101
"Direct graduate medical education costs" or "direct program costs"	R9-22-701
"Direct supervision"	R9-22-1201
"Director"	R9-22-101
"Disabled"	R9-22-1501
"Discussion"	R9-22-101
"Disenrollment"	R9-22-1701
"DME"	R9-22-101
"DRI inflation factor"	R9-22-701
"E.P.S.D.T. services"	42 CFR 440.40(b)
"Eligibility posting"	R9-22-701
"Eligible person"	A.R.S. § 36-2901
"Emergency behavioral health condition for ~~the~~ a non-FES member"	R9-22-201
"Emergency behavioral health services for ~~the~~ a non-FES member"	R9-22-201
"Emergency medical condition for ~~the~~ a non-FES member"	R9-22-201
"Emergency medical services for ~~the~~ a non-FES member"	R9-22-201
"Emergency medical services provider"	R9-22-1201
"Emergency medical or behavioral health condition for a FES member"	R9-22-217
"Emergency services costs"	A.R.S. § 36-2903.07
"Emergency services for a FES member"	R9-22-217
"Encounter"	R9-22-701
"Enrollment"	R9-22-1701
~~"Enumeration"~~	~~R9-22-101~~
"Equity"	R9-22-101
"Experimental services"	R9-22-203
"Existing outpatient service"	R9-22-701
"Expansion funds"	R9-22-701
"FAA"	~~R9-22-1401~~ R9-22-301
"Facility"	R9-22-101
"Factor"	R9-22-701 and 42 CFR 447.10
"FBR"	R9-22-101
"Federal financial participation" or "FFP"	42 CFR 400.203
"Federal poverty level" or "FPL"	A.R.S. § 36-2981
"Fee-For-Service" or "FFS"	R9-22-101
"FES member"	R9-22-101
"FESP"	R9-22-101
"First-party liability"	R9-22-1001
"File"	R9-22-1101
"Fiscal agent"	R9-22-210
"Fiscal intermediary"	R9-22-701
"Foster care maintenance payment"	42 U.S.C. 675(4)(A)
"FQHC"	R9-22-101
"~~Free Standing~~ Freestanding Children's Hospital"	R9-22-701

"Functionally limiting"	R9-22-1301
"Fund"	R9-22-712.07
"Graduate medical education (GME) program"	R9-22-701
"GME program approved by the Administration" or "approved GME program"	R9-22-701
"Grievance"	A.A.C. ~~R9-34-202~~ Chapter 34
"GSA"	R9-22-101
"HCAC"	R9-22-701
"HCPCS"	R9-22-701
"Health care institution"	A.R.S. § 36-401
"Health care practitioner"	R9-22-1201
"Hearing aid"	R9-22-201
"HIPAA"	R9-22-701
"Home health services"	R9-22-201
~~"Homebound"~~	~~R9-22-1401~~
"Hospital"	R9-22-101
"ICU"	R9-22-701
"IHS"	R9-22-101
"IHS enrolled" or "enrolled with IHS"	R9-22-708
"IMD" or "Institution for Mental Diseases"	42 CFR 435.1010 and R9-22-101
"Income"	~~R9-22-1401 and~~ R9-22-301 ~~R9-22-1603~~
~~"Indigent"~~	~~R9-22-1401~~
"Indirect program costs"	R9-22-701
"Individual"	R9-22-211
"In-kind income"	R9-22-1420
"Inmate of a public institution"	42 CFR 435.1010
"Inpatient covered charges"	R9-22-712.07
~~"Insured entity"~~	~~R9-22-720~~
~~"Interested party"~~	~~R9-22-101~~
"Intermediate Care Facility for the Mentally Retarded" or "ICF-MR"	42 U.S.C. 1396d(d)
"Intern and Resident Information System"	R9-22-701
"LEEP"	R9-22-2001
"Legal representative"	R9-22-101
"Level I trauma center"	R9-22-2101
"License" or "licensure"	R9-22-101
"Licensee"	R9-22-1201
~~"Liquid assets"~~	~~R9-22-1401~~
"MAGI-based income"	R9-22-1401
"Mailing date"	R9-22-101
"Medical education costs"	R9-22-701
"Medical expense deduction" or "MED"	R9-22-1401
"Medical practitioner"	R9-22-1201
"Medical record"	R9-22-101
"Medical review"	R9-22-701
"Medical services"	A.R.S. § 36-401
"Medical supplies"	~~R9-22-201~~ R9-22-101
"Medical support"	~~R9-22-1401~~ R9-22-301
"Medically eligible"	R9-22-1301
"Medically necessary"	R9-22-101
"Medicare claim"	R9-22-101
~~"Medicare HMO"~~	~~R9-22-101~~
"Medicare Urban or Rural Cost-to-Charge Ratio (CCR)"	R9-22-701
"Member"	A.R.S. § 36-2901 or R9-22-301
"Mental disorder"	A.R.S. § 36-501
"Milliman study"	R9-22-712.07
"Monthly equivalent"	R9-22-1401, ~~R9-22-1421 and R9-22-1603~~
"Monthly income"	R9-22-1401, ~~R9-22-1421 and R9-22-1603~~
"National Standard code sets"	R9-22-701

"New hospital"	R9-22-701
"NICU"	R9-22-701
"Noncontracted Hospital"	R9-22-718
"Noncontracting provider"	A.R.S. § 36-2901
"Non-FES member"	R9-22-101
"Non-IHS Acute Hospital"	R9-22-701
~~"Nonparent caretaker relative"~~	~~R9-22-1401~~
~~"Notice of Findings"~~	~~R9-22-109~~
"Nursing facility" or "NF"	42 U.S.C. 1396r(a)
~~"OBHL"~~	~~R9-22-1201~~
"Observation day"	R9-22-701
"Occupational therapy"	R9-22-201
"Offeror"	R9-22-101
"Operating costs"	R9-22-701
"OPPC"	R9-22-701
"Organized health care delivery system"	R9-22-701
"Outlier"	R9-22-701
"Outpatient hospital service"	R9-22-701
"Ownership change"	R9-22-701
"Ownership interest"	42 CFR 455.101
~~"Parent"~~	~~R9-22-1603~~
"Partial Care"	R9-22-1201
"Participating institution"	R9-22-701
"Peer group"	R9-22-701
"Peer-reviewed study"	R9-22-2001
"Penalty"	R9-22-1101
"Person"	R9-22-1101
"Pharmaceutical service"	R9-22-201
"Physical therapy"	R9-22-201
"Physician"	R9-22-101
"Physician assistant"	R9-22-1201
"Post-stabilization services"	R9-22-201 or 42 CFR 422.113
~~"PPC"~~	~~R9-22-701~~
"PPS bed"	R9-22-701
"Practitioner"	R9-22-101
"Pre-enrollment process"	~~R9-22-1401~~ R9-22-301
~~"Premium"~~	~~R9-22-1603~~
"Prescription"	R9-22-101
"Primary care provider" or "PCP"	R9-22-101
"Primary care provider services"	R9-22-201
"Prior authorization"	R9-22-101
"Prior period coverage" or "PPC"	~~R9-22-701~~ R9-22-101
"Procedure code"	R9-22-701
"Procurement file"	R9-22-601
"Proposal"	R9-22-101
"Prospective rates"	R9-22-701
"Psychiatrist"	R9-22-1201
"Psychologist"	R9-22-1201
"Psychosocial rehabilitation services"	R9-22-201
"Public hospital"	R9-22-701
"Qualified alien"	A.R.S. § 36-2903.03
"Qualified behavioral health service provider"	R9-22-1201
"Quality management"	R9-22-501
"Radiology"	R9-22-101
"RBHA" or "Regional Behavioral Health Authority"	R9-22-201
"Reason to know" or "had reason to know"	R9-22-1101
"Rebase"	R9-22-701
"Redetermination"	R9-22-1301
"Referral"	R9-22-101

"Rehabilitation services"	R9-22-101
"Reinsurance"	R9-22-701
"Remittance advice"	R9-22-701
"Resident"	R9-22-701
"Residual functional deficit"	R9-22-201
"Resources"	~~R9-22-1401~~ R9-22-301
"Respiratory therapy"	R9-22-201
"Respite"	R9-22-1201
"Responsible offeror"	R9-22-101
"Responsive offeror"	R9-22-101
"Revenue Code"	R9-22-701
"Review"	R9-22-101
"Review month"	R9-22-101
"RFP"	R9-22-101
"Rural Contractor"	R9-22-718
"Rural Hospital"	R9-22-712.07 and R9-22-718
"Scope of services"	R9-22-201
"Section 1115 Waiver"	A.R.S. § 36-2901
"Service location"	R9-22-101
"Service site"	R9-22-101
"SOBRA"	R9-22-101
"Specialist"	R9-22-101
"Specialty facility"	R9-22-701
"Speech therapy"	R9-22-201
"Spendthrift restriction"	R9-22-1401
"Sponsor"	~~R9-22-1401~~ R9-22-301
"Sponsor deemed income"	~~R9-22-1401~~ R9-22-301
"Sponsoring institution"	R9-22-701
"Spouse"	R9-22-101
"SSA"	42 CFR 1000.10
~~"SSDI Temporary Medical Coverage"~~	~~R9-22-1603~~
"SSI"	42 CFR 435.4
"SSN"	R9-22-101
"Stabilize"	42 U.S.C. 1395dd
"Standard of care"	R9-22-101
"Sterilization"	R9-22-201
"Subcontract"	R9-22-101
"Submitted"	A.R.S. § 36-2904
"Substance abuse"	R9-22-201
"SVES"	~~R9-22-1401~~ R9-22-301
"Tax dependent"	42 CFR 435.4
"Taxi"	A.R.S. § ~~28-2515~~ 28-101(53)
"Taxpayer"	R9-22-1401
~~"Therapeutic foster care services"~~	~~R9-22-1201~~
"Third-party"	R9-22-1001
"Third-party liability"	R9-22-1001
"Tier"	R9-22-701
"Tiered per diem"	R9-22-701
"Title IV-D"	R9-22-1401
"Title IV-E"	R9-22-1401
"Total Inpatient payments"	R9-22-712.07
"Trauma and Emergency Services Fund"	A.R.S. § 36-2903.07
"TRBHA" or "Tribal Regional Behavioral Health Authority"	R9-22-1201
"Treatment"	R9-22-2004
"Tribal Facility"	A.R.S. § 36-2981
"Unrecovered trauma center readiness costs"	R9-22-2101
"Urban Contractor"	R9-22-718
"Urban Hospital"	R9-22-718
"USCIS"	~~R9-22-1401~~ R9-22-301

"Utilization management"	R9-22-501
"WWHP"	R9-22-2001

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

~~"Act" means the Social Security Act.~~

"ADHS" means the Arizona Department of Health Services.

"Adverse action" means an action taken by the Department or Administration to deny, discontinue, or reduce medical assistance.

"Affiliated corporate organization" means any organization that has ownership or control interests as defined in 42 CFR 455.101, and includes a parent and subsidiary corporation.

"AHCCCS" means the Arizona Health Care Cost Containment System, which is composed of the Administration, contractors, and other arrangements through which health care services are provided to a member.

"AHCCCS registered provider" means a provider or noncontracting provider who:

Enters into a provider agreement with the Administration under R9-22-703(A), and

Meets license or certification requirements to provide covered services.

"Ancillary service" means all hospital services for patient care other than room and board and nursing services, including but not limited to, laboratory, radiology, drugs, delivery room (including maternity labor room), operating room (including postanesthesia and postoperative recovery rooms), and therapy services (physical, speech, and occupational).

~~"Appellant" means an applicant or member who is appealing an adverse action by the Department or Administration.~~

"Applicant" means a person who submits or whose authorized representative submits a written, signed, and dated application for AHCCCS benefits.

"Application" means an official request for AHCCCS medical coverage made under this Chapter.

"Assignment" means enrollment of a member with a contractor by the Administration.

"Attending physician" means a licensed allopathic or osteopathic doctor of medicine who has primary responsibility for providing or directing preventive and treatment services for a Fee-For-Service member.

"Authorized representative" means a person who is authorized to apply for medical assistance or act on behalf of another person.

"Behavioral health paraprofessional" means an individual who is not a behavioral health professional who provides behavioral health services at or for a health care institution according to the health care institution's policies and procedures that:

If the behavioral health services were provided in a setting other than a licensed health care institution,

If the individual would be required to be licensed as a behavioral professional under A.R.S. Title 32, Chapter 33,

If the behavioral health services were provided in a setting other than a licensed health care institution; and

Are provided under supervision by a behavioral health professional R9-10-101.

"Behavioral Health Professional" has the same meaning as defined A.A.C. R9-10-101 excluding subsection (g).

"Capped fee-for-service" means the payment mechanism by which a provider of care is reimbursed upon submission of a valid claim for a specific covered service or equipment provided to a member. A payment is made in accordance with an upper or capped limit established by the Director. This capped limit can either be a specific dollar amount or a percentage of billed charges.

"Case record" means an individual or family file retained by the Department that contains all pertinent eligibility information, including electronically stored data.

~~"Case review" means the Administration's evaluation of an individual's or family's circumstances and case record in a review month.~~

~~"Categorically eligible" means a person who is eligible under A.R.S. §§ 36-2901(6)(a)(i), (ii), or (iii) or 36-2934.~~

"Children's Rehabilitative Services" or "CRS" means the program that provides covered medical services and covered support services in accordance with A.R.S. § 36-261.

"CMS" means the Centers for Medicare and Medicaid Services.

"Continuous stay" means a period during which a member receives inpatient hospital services without interruption beginning with the date of admission and ending with the date of discharge or date of death.

"Contract" means a written agreement entered into between a person, an organization, or other entity and the Administration to provide health care services to a member under A.R.S. Title 36, Chapter 29, and this Chapter.

"Contract year" means the period beginning on October 1 of a year and continuing until September 30 of the following year.

"Covered services" means the health and medical services described in Articles 2 and 12 of this Chapter as being eligible for reimbursement by AHCCCS.

"Day" means a calendar day unless otherwise specified.

"DBHS" means the Division of Behavioral Health Services within the Arizona Department of Health Services.

"DES" means the Department of Economic Security.

"Diagnostic services" means services provided for the purpose of determining the nature and cause of a condition, illness, or injury.

"Director" means the Director of the Administration or the Director's designee.

"Discussion" means an oral or written exchange of information or any form of negotiation.

"DME" means durable medical equipment, which is an item or appliance that can withstand repeated use, is designed to serve a medical purpose, and is not generally useful to a person in the absence of a medical condition, illness, or injury.

~~"Enumeration" means the assignment of a nine-digit identification number to a person by the Social Security Administration.~~

"Equity" means the county assessor full cash value or market value of a resource minus valid liens, encumbrances, or both.

"Facility" means a building or portion of a building licensed or certified by the Arizona Department of Health Services as a health care institution under A.R.S. Title 36, Chapter 4, to provide a medical service, a nursing service, or other health care or health-related service.

"FBR" means Federal Benefit Rate, the maximum monthly Supplemental Security Income payment rate for a member or a married couple.

"Fee-For-Service" or "FFS" means a method of payment by the AHCCCS Administration to a registered provider on an amount-per-service basis for a member not enrolled with a contractor.

"FES member" means a person who is eligible to receive emergency medical and behavioral health services through the FESP under R9-22-217.

"FESP" means the federal emergency services program under R9-22-217 which covers services to treat an emergency medical or behavioral health condition for a member who is determined eligible under A.R.S. § 36-2903.03(D).

"FQHC" means federally qualified health center.

"GSA" means a geographical service area designated by the Administration within which a contractor provides, directly or through a subcontract, a covered health care service to a member enrolled with the contractor.

"Hospital" means a health care institution that is licensed as a hospital by the Arizona Department of Health Services under A.R.S. Title 36, Chapter 4, Article 2, and certified as a provider under Title XVIII of the Social Security Act, as amended, or is currently determined, by the Arizona Department of Health Services as the CMS designee, to meet the requirements of certification.

"IHS" means Indian Health Service.

"IMD" or "Institution for Mental Diseases" means an Institution for Mental Diseases as described in 42 CFR 435.1010 that is licensed by ADHS.

~~"Interested party" means an actual or prospective offeror whose economic interest may be directly affected by the issuance of an RFP, the award of a contract, or by the failure to award a contract.~~

"Legal representative" means a custodial parent of a child under 18, a guardian, or a conservator.

"License" or "licensure" means a nontransferable authorization that is granted based on established standards in law by a state or a county regulatory agency or board and allows a health care provider to lawfully render a health care service.

"Mailing date" when used in reference to a document sent first class, postage prepaid, through the United States mail, means the date:

Shown on the postmark;

Shown on the postage meter mark of the envelope, if no postmark; or

Entered as the date on the document, if there is no legible postmark or postage meter mark.

"Medical record" means a document that relates to medical or behavioral health services provided to a member by a

physician or other licensed practitioner of the healing arts and that is kept at the site of the provider.

"Medical supplies" means consumable items that are designed specifically to meet a medical purpose.

"Medically necessary" means a covered service is provided by a physician or other licensed practitioner of the healing arts within the scope of practice under state law to prevent disease, disability, or other adverse health conditions or their progression, or to prolong life.

"Medicare claim" means a claim for Medicare-covered services for a member with Medicare coverage.

~~"Medicare HMO" means a health maintenance organization that has a current contract with Centers for Medicare and Medicaid Services for participation in the Medicare program under 42 CFR 417(L).~~

"Non-FES member" means an eligible person who is entitled to full AHCCCS services.

"Offeror" means an individual or entity that submits a proposal to the Administration in response to an RFP.

"Physician" means a person licensed as an allopathic or osteopathic physician under A.R.S. Title 32, Chapter 13 or Chapter 17.

"Practitioner" means a physician assistant licensed under A.R.S. Title 32, Chapter 25, or a registered nurse practitioner certified under A.R.S. Title 32, Chapter 15.

"Prescription" means an order to provide covered services that is signed or transmitted by a provider authorized to prescribe the services.

"Primary care provider" or "PCP" means an individual who meets the requirements of A.R.S. § 36-2901~~(12) or (13)~~ (14), and who is responsible for the management of a member's health care.

"Prior authorization" means the process by which the Administration or contractor, whichever is applicable, authorizes, in advance, the delivery of covered services based on factors including but not limited to medical necessity, cost effectiveness, compliance with this Article and any applicable contract provisions. Prior authorization is not a guarantee of payment.

"Prior period coverage" means the period prior to the member's enrollment during which a member is eligible for covered services. PPC begins on the first day of the month of application or the first eligible month, whichever is later, and continues until the day the member is enrolled with a contractor.

"Proposal" means all documents, including best and final offers, submitted by an offeror in response to an RFP by the Administration.

"Radiology" means professional and technical services rendered to provide medical imaging, radiation oncology, and radioisotope services.

"Referral" means the process by which a member is directed by a primary care provider or an attending physician to another appropriate provider or resource for diagnosis or treatment.

"Rehabilitation services" means physical, occupational, and speech therapies, and items to assist in improving or restoring a person's functional level.

"Responsible offeror" means an individual or entity that has the capability to perform the requirements of a contract and that ensures good faith performance.

"Responsive offeror" means an individual or entity that submits a proposal that conforms in all material respects to an RFP.

"Review" means a review of all factors affecting a member's eligibility.

"Review month" means the month in which the individual's or family's circumstances and case record are reviewed.

"RFP" means Request for Proposals, including all documents, whether attached or incorporated by reference, that are used by the Administration for soliciting a proposal under 9 A.A.C. 22, Article 6.

"Service location" means a location at which a member obtains a covered service provided by a physician or other licensed practitioner of the healing arts under the terms of a contract.

"Service site" means a location designated by a contractor as the location at which a member is to receive covered services.

"S.O.B.R.A." means Section 9401 of the Sixth Omnibus Budget Reconciliation Act, 1986, amended by the Medicare Catastrophic Coverage Act of 1988, 42 U.S.C. 1396a(a)(10)(A)(i)(IV), 42 U.S.C. 1396a(a)(10)(A)(i)(VI), and 42 U.S.C. 1396a(a)(10)(A)(i)(VII).

"Specialist" means a Board-eligible or certified physician who declares himself or herself as a specialist and practices a specific medical specialty. For the purposes of this definition, Board-eligible means a physician who meets all the requirements for certification but has not tested for or has not been issued certification.

"Spouse" means a person who has entered into a contract of marriage recognized as valid by this state.

"SSN" means Social Security number.

"Standard of care" means a medical procedure or process that is accepted as treatment for a specific illness, injury, or medical condition through custom, peer review, or consensus by the professional medical community.

"Subcontract" means an agreement entered into by a contractor with any of the following:

A provider of health care services who agrees to furnish covered services to a member,

A marketing organization, or

Any other organization or person that agrees to perform any administrative function or service for the contractor specifically related to securing or fulfilling the contractor's obligation to the Administration under the terms of a contract.

"Taxi" is as defined in A.R.S. § ~~28-2515~~ 28-101(53).

ARTICLE 2. SCOPE OF SERVICES

R9-22-201. Scope of Services-related Definitions

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

"Anticipatory guidance" means a person responsible for a child receives information and guidance of what the person should expect of the child's development and how to help the child stay healthy.

"Behavioral health recipient" means a Title XIX or Title XXI acute care member who is eligible for, and is receiving, behavioral health services through ADHS/DBHS.

"Benefit year" means a one-year time period of October 1st through September 30th.

~~"Clinical supervision" means a Clinical Supervisor under 9 A.A.C. 20, Article 2 reviews the skills and knowledge of the individual supervised and provides guidance in improving or developing the skills and knowledge.~~

"Emergency behavioral health condition for a non-FES member" means a condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in:

Placing the health of the person, including mental health, in serious jeopardy;

Serious impairment to bodily functions;

Serious dysfunction of any bodily organ or part; or

Serious physical harm to another person.

"Emergency behavioral health services for a non-FES member" means those behavioral health services provided for the treatment of an emergency behavioral health condition.

"Emergency medical condition for a non-FES member" means treatment for a medical condition, including labor and delivery, ~~that~~ which manifests itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in:

Placing the member's health in serious jeopardy,

Serious impairment to bodily functions, or

Serious dysfunction of any bodily organ or part.

"Emergency medical services for a non-FES member" means services provided for the treatment of an emergency medical condition.

"Hearing aid" means an instrument or device designed for, or represented by the supplier as aiding or compensating for impaired or defective human hearing, and includes any parts, attachments, or accessories of the instrument or device.

"Home health services" means services and supplies that are provided by a home health agency that coordinates in-home intermittent services for curative, habilitative care, including home-health aide services, licensed nurse services, and medical supplies, equipment, and appliances.

"Occupational therapy" means medically prescribed treatment provided by or under the supervision of a licensed occupational therapist, to restore or improve an individual's ability to perform tasks required for independent functioning.

"Pharmaceutical service" means medically necessary medications that are prescribed by a physician, practitioner, or dentist under R9-22-209.

"Physical therapy" means treatment services to restore or improve muscle tone, joint mobility, or physical function

provided by or under the supervision of a registered physical therapist.

"Post-stabilization services" means covered services related to an emergency medical or behavioral health condition provided after the condition is stabilized.

"Primary care provider services" means healthcare services provided by and within the scope of practice, as defined by law, of a licensed physician, certified nurse practitioner, or licensed physician assistant.

"Psychosocial rehabilitation services" means services that provide education, coaching, and training to address or prevent residual functional deficits and may include services that may assist a member to secure and maintain employment. Psychosocial rehabilitation services may include:

Living skills training,

Cognitive rehabilitation,

Health promotion,

Supported employment, and

Other services that increase social and communication skills to maximize a member's ability to participate in the community and function independently.

"RBHA" or "Regional Behavioral Health Authority" means the same as in A.R.S. § 36-3401.

"Residual functional deficit" means a member's inability to return to a previous level of functioning, usually after experiencing a severe psychotic break or state of decompensation.

"Respiratory therapy" means treatment services to restore, maintain, or improve respiratory functions that are provided by, or under the supervision of, a respiratory therapist licensed according to A.R.S. Title 32, Chapter 35.

"Scope of services" means the covered, limited, and excluded services under Articles 2 and 12 of this Chapter.

"Speech therapy" means medically prescribed diagnostic and treatment services provided by or under the supervision of a certified speech therapist.

"Sterilization" means a medically necessary procedure, not for the purpose of family planning, to render an eligible person or member barren in order to:

Prevent the progression of disease, disability, or adverse health conditions; or

Prolong life and promote physical health.

"Substance abuse" means the chronic, habitual, or compulsive use of any chemical matter that, when introduced into the body, is capable of altering human behavior or mental functioning and, with extended use, may cause psychological dependence and impaired mental, social or educational functioning. Nicotine addiction is not considered substance abuse for adults who are 21 years of age or older.

R9-22-202. General Requirements

A. For the purposes of this Article, the following definitions apply:
1. "Authorization" means written, verbal, or electronic authorization by:
   a. The Administration for services rendered to a fee-for-service member, or
   b. The contractor for services rendered to a prepaid capitated member.
2. Use of the phrase "attending physician" applies only to the fee-for-service population.

B. In addition to other requirements and limitations specified in this Chapter, the following general requirements apply:
1. Only medically necessary, cost effective, and federally-reimbursable and state-reimbursable services are covered services.
2. Covered services for the federal emergency services program (FESP) are under R9-22-217.
3. The Administration or a contractor may waive the covered services referral requirements of this Article.
4. Except as authorized by the Administration or a contractor, a primary care provider, attending physician, practitioner, or a dentist shall provide or direct the member's covered services. Delegation of the provision of care to a practitioner does not diminish the role or responsibility of the primary care provider.
5. A contractor shall offer a female member direct access to preventive and routine services from gynecology providers within the contractor's network without a referral from a primary care provider.
6. A member may receive behavioral health services as specified in Articles 2 and 12.
7. ~~AHCCCS~~ The Administration or a contractor shall provide services under the Section 1115 Waiver as defined in A.R.S. § 36-2901.
8. An AHCCCS registered provider shall provide covered services within the provider's scope of practice.
9. In addition to the specific exclusions and limitations otherwise specified under this Article, the following are not covered:
   a. A service that is determined by the AHCCCS Chief Medical Officer to be experimental or provided primarily for the purpose of research;

b. Services or items furnished gratuitously, and
c. Personal care items except as specified under R9-22-212.

10. Medical or behavioral health services are not covered services if provided to:
    a. An inmate of a public institution; or
    b. A person who is in residence at an institution for the treatment of tuberculosis~~; or.~~
    ~~c. A person age 21 through 64 who is in an IMD, unless the service is covered under Article 12 of this Chapter.~~

C. The Administration or a contractor may deny payment of non-emergency services if prior authorization is not obtained as specified in this Article and Article 7 of this Chapter. The Administration or a contractor shall not provide prior authorization for services unless the provider submits documentation of the medical necessity of the treatment along with the prior authorization request.

D. Services under A.R.S. § 36-2908 provided during the prior period coverage do not require prior authorization.

E. Prior authorization is not required for services necessary to evaluate and stabilize an emergency medical condition. The Administration or a contractor shall not reimburse services that require prior authorization unless the provider documents the diagnosis and treatment.

F. A service is not a covered service if provided outside the GSA unless one of the following applies:
1. A member is referred by a primary care provider for medical specialty care outside the GSA. If a member is referred outside the GSA to receive an authorized medically necessary service, the contractor shall also provide all other medically necessary covered services for the member;
2. There is a net savings in service delivery costs as a result of going outside the GSA that does not require undue travel time or hardship for a member or the member's family;
3. The contractor authorizes placement in a nursing facility located out of the GSA; or
4. Services are provided during prior period coverage or during the prior quarter coverage.

G. If a member is traveling or temporarily residing outside of the GSA, covered services are restricted to emergency care services, unless otherwise authorized by the contractor.

H. A contractor shall provide at a minimum, directly or through subcontracts, the covered services specified in this Chapter and in contract.

I. The Administration shall determine the circumstances under which a FFS member may receive services, other than emergency services, from service providers outside the member's county of residence or outside the state. Criteria considered by the Administration in making this determination shall include availability and accessibility of appropriate care and cost effectiveness.

J. The restrictions, limitations, and exclusions in this Article do not apply to ~~the following:~~
~~A~~a contractor electing to provide noncovered services.
   ~~a.~~1. The Administration shall not consider the costs of providing a noncovered service to a member in the development or negotiation of a capitation rate.
   ~~b.~~2. A contractor shall pay for noncovered services from administrative revenue or other contractor funds that are unrelated to the provision of services under this Chapter.
   3. If a member requests a service that is not covered or is not authorized by a contractor, or the Administration, an AHCCCS-registered service provider may provide the service according to R9-22-702.

K. Subject to CMS approval, the restrictions, limitations, and exclusions specified in the following subsections do not apply to American Indians receiving services through IHS or a tribal health program operating under P.L. 93-638 when those services are eligible for 100 percent federal financial participation:
1. R9-22-205(A)(8),
2. R9-22-205(B)(4)(f),
3. R9-22-206,
4. R9-22-207,
5. R9-22-212(C),
6. R9-22-212(D),
7. R9-22-212(E)(8),
8. R9-22-215(C)(2), and
9. R9-22-215(C)(5).

R9-22-210.01. Emergency Behavioral Health Services for Non-FES Members

A. General provisions.
1. Applicability. This Section applies to emergency behavioral health services for non-FES members. Provisions regarding emergency medical services for non-FES members are in R9-22-210. Provisions regarding emergency medical and behavioral health services for FES members are in R9-22-217.
2. Definition. For the purposes of this Section, "contractor" has the same meaning as in A.R.S. § 36-2901. Contractor does not include ADHS/DBHS, a subcontractor of ADHS/DBHS, or Children's Rehabilitative Services.
3. Responsible entity for inpatient emergency behavioral health services.
   a. Members enrolled with a contractor.

~~i.~~ ADHS/DBHS. ADHS/DBHS or a subcontractor of ADHS/DBHS is responsible for providing all inpatient emergency behavioral health services to non-FES members with psychiatric or substance abuse diagnoses who are enrolled with the contractor~~., from one of the following time periods, whichever comes first:~~
~~(1) The date on which the member becomes a behavioral health recipient, or~~
~~(2) The 73rd hour after admission for inpatient emergency behavioral health services.~~

~~ii. Contractors. Contractors are responsible for providing inpatient emergency behavioral health services to non-FES members with psychiatric or substance abuse diagnoses who are enrolled with a contractor and are not behavioral health recipients, for the first 72 hours after admission.~~

b. FFS members. ADHS/DBHS or a subcontractor of ADHS/DBHS is responsible for providing all inpatient emergency behavioral health services for non-FES FFS members with psychiatric or substance abuse diagnoses unless services are provided in an IHS or tribally operated 638 facility.

4. Responsible entity for non-inpatient emergency behavioral health services for non-FES members. ADHS/DBHS or a subcontractor of ADHS/DBHS is responsible for providing all non-inpatient emergency behavioral health services for non-FES members.
5. Verification. A provider of emergency behavioral health services shall verify a person's eligibility status with AHCCCS, and if eligible, determine whether the person is a member enrolled with AHCCCS as non-FES FFS or is enrolled with a contractor, and determine whether the member is a behavioral health recipient as defined in ~~R9-22-102~~ R9-22-201.
6. Prior authorization.
   a. Emergency behavioral health services. A provider is not required to obtain prior authorization for emergency behavioral health services.
   b. Non-emergency behavioral health services. When a non-FES member's behavioral health condition is determined by the provider not to require emergency behavioral health services, the provider shall follow the prior authorization requirements of a contractor and ADHS/DBHS or a subcontractor of ADHS/DBHS.
7. Prohibition against limitation or denial of payment. A contractor, TRBHA, the Administration, ADHS/DBHS, or a subcontractor of ADHS/DBHS shall not limit or deny payment to an emergency behavioral health provider for emergency behavioral health services to a non-FES member for the following reasons:
   a. On the basis of lists of diagnoses or symptoms;
   b. Prior authorization was not obtained;
   c. The provider does not have a contract;
   d. An employee of the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS instructs the member to obtain emergency behavioral health services; or
   e. The failure of a hospital, emergency room provider, or fiscal agent to notify the member's contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS within 10 days from the day the member presented for the emergency service.
8. Grounds for denial. A contractor, the Administration, ADHS/DBHS, or a subcontractor of ADHS/DBHS may deny payment for emergency behavioral health. services for reasons including but not limited to the following:
   a. The claim was not a clean claim;
   b. The claim was not submitted timely; or
   c. The provider failed to provide timely notification under subsection (A)(9) to the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS or the Administration.
9. Notification.
   a. A hospital, emergency room provider, or fiscal agent shall notify a contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, whichever is appropriate, no later than the 11th day from presentation of the non-FES member for emergency inpatient behavioral health services.
   b. A hospital, emergency room provider, or fiscal agent shall notify the Administration no later than 72 hours after a FFS member receiving emergency behavioral health services presents to a hospital for inpatient services.

~~10. Behavioral health evaluation. An emergency behavioral health evaluation is covered as an emergency behavioral health service for a non-FES member under this Section if:~~
   ~~a. Required to evaluate or stabilize an acute episode of mental disorder or substance abuse, and~~
   ~~b. Provided by a qualified provider who is:~~
      ~~i. A behavioral health medical practitioner as defined in R9-22-112, including a licensed psychologist, a licensed clinical social worker, a licensed professional counselor, and a licensed marriage and family therapist; or~~
      ~~ii. An ADHS/DBHS-contracted provider.~~

~~11.~~10. Transfer or discharge. The attending physician or the provider actually treating the non-FES member for the emergency behavioral health condition shall determine when the member is sufficiently stabilized for transfer or discharge and that decision shall be binding on the contractor and ADHS/DBHS or a subcontractor of ADHS/DBHS.

B. Post-stabilization requirements for non-FES members.

1. A contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, as appropriate, is financially responsible for behavioral health post-stabilization services obtained within or outside the network that have been prior authorized by the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS.
2. The contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, as appropriate, is financially responsible for behavioral health post-stabilization services obtained within or outside the network that are not prior authorized by the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, but are administered to maintain the member's stabilized condition within one hour of a request to the contractor, ADHS/DBHS, or a subcontractor for prior authorization of further post-stabilization services;
3. The contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, as appropriate, is financially responsible for behavioral health post-stabilization services obtained within or outside the network that are not prior authorized by the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, but are administered to maintain, improve, or resolve the member's stabilized condition if:
   a. The contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, does not respond to a request for prior authorization within one hour;
   b. The contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS authorized to give the prior authorization cannot be contacted; or
   c. The representative of the contractor, ADHS/DBHS, or the subcontractor and the treating physician cannot reach an agreement concerning the member's care and the contractor's, ADHS/DBHS' or the subcontractor's physician, is not available for consultation. The treating physician may continue with care of the member until ADHS/DBHS', the contractor's, or the subcontractor's physician is reached, or:
      i. A ~~contractor~~ contracted physician with privileges at the treating hospital assumes responsibility for the member's care;
      ii. ADHS/DBHS', a contractor's, or a subcontractor's physician assumes responsibility for the member's care through transfer;
      iii. A representative of the contractor, ADHS/DBHS, or the subcontractor and the treating physician reach agreement concerning the member's care; or
      iv. The member is discharged.

R9-22-217. Services Included in the Federal Emergency Services Program

A. Definition. Notwithstanding the definition in R9-22-201, for ~~For~~ the purposes of this Section, an emergency medical or behavioral health condition for a FES member means a medical condition or a behavioral health condition, including labor and delivery, manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:
1. Placing the member's health in serious jeopardy,
2. Serious impairment to bodily functions,
3. Serious dysfunction of any bodily organ or part, or
4. Serious physical harm to another person.

B. Services. "Emergency services for a FES member" mean those medical or behavioral health services provided for the treatment of an emergency condition. Emergency services include outpatient dialysis services for a FES member with End Stage Renal Disease (ESRD) where a treating physician has certified for the month in which services are received that in the physician's opinion the absence of receiving dialysis at least three times per week would reasonably be expected to result in:
1. Placing the member's health in serious jeopardy, or
2. Serious impairment of bodily function, or
3. Serious dysfunction of a bodily organ or part.

C. Covered services. Services are considered emergency services if all of the criteria specified in subsection (A) are satisfied at the time the services are rendered. The Administration shall determine whether an emergency condition exists on a case-by-case basis.

D. Prior authorization. A provider is not required to obtain prior authorization for emergency services for FES members. Prior authorization for outpatient dialysis services is met when the treating physician has completed and signed a monthly certification as described in subsection (B).

E. Services rendered through the Federal Emergency Services Program are subject to all exclusions and limitation on services in this Article including but not limited to the limitations on inpatient hospital services in R9-22-204.

ARTICLE 12. BEHAVIORAL HEALTH SERVICES

R9-22-1201. ~~General Requirements~~ Definitions

~~General requirements. The following general requirements apply to behavioral health services provided under this Article, subject to all exclusions and limitations specified in this Article.~~

~~1. Administration. The program shall be administered as specified in A.R.S. § 36-2903.~~

~~2. Provision of services. Behavioral health services shall be provided as specified in A.R.S. § 36-2907 and this Chapter.~~

~~3.~~ Definitions. The following definitions apply to this Article:

"Adult behavioral health therapeutic home" as defined in 9 A.A.C. 10, Article 1.

~~a.~~ "Agency" for the purposes of this Article means ~~the same as in A.A.C. R9-20-101~~ a behavioral health facility, a classification of a health care institution, including a mental health treatment agency defined in A.R.S. § 36-501, that is licensed to provide behavioral health services according to A.R.S. Title 36, Chapter 4.

"Assessment" means an analysis of a patients need for physical health services or behavioral health services to determine which services a health care institution will provide to the patient.

~~b.~~ "Behavior management services" means services that assist the member in carrying out daily living tasks and other activities essential for living in the community, including personal care services.

~~c. "Behavioral health adult therapeutic home" means a licensed behavioral health service agency that is the licensee's residence where behavioral health adult therapeutic home care services are provided to at least one, but no more than three individuals, who reside at the residence, have been diagnosed with behavioral health issues, and are provided with food and are integrated into the licensee's family.~~

~~d.~~ "Behavioral health therapeutic home care services" means interactions that teach the client living, social, and communication skills to maximize the client's ability to live and participate in the community and to function independently, including assistance in the self-administration of medication and any ancillary services indicated by the client's treatment plan, as appropriate.

~~e. "Behavioral health evaluation" means the assessment of a member's medical, psychological, psychiatric, or social condition to determine if a behavioral health disorder exists and, if so, to establish a treatment plan for all medically necessary services.~~

~~f.~~ "~~Behavioral health medical practitioner" means a health care practitioner with at least one year of full-time behavioral health work experience~~.

~~g. "Behavioral health professional" means the same as in A.A.C. R9-20-101~~

~~h. "Behavioral health service" means a service provided for the evaluation and diagnosis of a mental health or substance abuse condition and the planned care, treatment, and rehabilitation of the member.~~

"Behavioral health services" means medical services, nursing services, health-related services, or ancillary services provided to an individual to address the individual's behavioral health issue.

~~i. "Behavioral health technician" means the same as in A.A.C. R9-20-101.~~

"Behavioral health technician" means an individual who is not a behavioral health professional who provides behavioral health services at or for a health care institution according to the health care institution's policies and procedures that: a. If the behavioral health services were provided in a setting other than a licensed health care institution, the individual would be required to be licensed as a behavioral professional under A.R.S. Title 32, Chapter 33; and b. Are provided with clinical oversight by a behavioral health professional.

~~j.~~ "Case management" for the purposes of this Article, means services and activities that enhance treatment, compliance, and effectiveness of treatment.

~~k.~~ "Certified psychiatric nurse practitioner" means a registered nurse practitioner who meets the psychiatric specialty area requirements under A.A.C. R4-19-505(C).

~~l. "Client" for the purposes of this rule means the same as in A.A.C. R9-22-101~~

"Clinical oversight" means as described under 9 A.A.C. 10.

~~m.~~ "Cost avoid" means to avoid payment of a third-party liability claim when the probable existence of third-party liability has been established under 42 CFR 433.139(b).

"Court-ordered evaluation" has the same meaning as "evaluation" in A.R.S. § 36-501.

"Court-ordered pre-petition screening" has the same meaning as "pre-petition screening" in A.R.S. § 36-501.

"Court-ordered treatment" means treatment provided according to A.R.S. Title 36, Chapter 5.

"Crisis services" means immediate and unscheduled behavioral health services provided to a patient to address an acute behavioral health issue affecting the patient.

"Direct supervision" has the same meaning as "supervision" in A.R.S. § 36-401.

"Emergency medical services provider" has the same meaning as in A.R.S. § 36-2201.

"Health care institution" has the same meaning as defined in A.R.S. § 36-401.

~~n.~~ "Health care practitioner" means a:

Physician;

Physician assistant;

Nurse practitioner; or

Other individual licensed and authorized by law to use and prescribe medication and devices, as defined in A.R.S. § 32-1901.

~~o.~~ "Licensee" means the same as in ~~A.A.C. R9-20-101~~ 9 A.A.C. 10, Article 1.

~~p. "OBHL" means the same as in A.A.C. R9-20-101.~~

"Medical practitioner" means a physician, physician assistant, or nurse practitioner.

~~q.~~ "Partial care" means a day program of services provided to individual members or groups that is designed to improve the ability of a person to function in a community, and includes basic, therapeutic, and medical day programs.

~~r.~~ "Physician assistant" means the same as in A.R.S. § 32-2501 except that when providing a behavioral health service, the physician assistant shall be supervised by an AHCCCS-registered psychiatrist.

~~s.~~ "Psychiatrist" means a physician who meets the licensing requirements under A.R.S. § 32-1401 or a doctor of osteopathy who meets the licensing requirements under A.R.S. § 32-1800, and meets the additional requirements of a psychiatrist under A.R.S. § 36-501.

~~t.~~ "Psychologist" means a person who meets the licensing requirements under A.R.S. §§ 32-2061 and 36-501.

~~u.~~ "Qualified behavioral health service provider" means a behavioral health service provider that meets the requirements of R9-22-1206.

~~v.~~ "Respite" means a period of care and supervision of a member to provide rest or relief to a family member or other person caring for the member. Respite provides activities and services to meet the social, emotional, and physical needs of the member during respite.

~~w.~~ "TRBHA" or "Tribal Regional Behavioral Health Authority" means a Native American tribe under contract with ADHS/DBHS to coordinate the delivery of behavioral health services to eligible and enrolled members of the federally-recognized tribal nation.

R9-22-1202. ADHS, ~~and~~ Contractor, Administration and CRS Responsibilities

A. ADHS responsibilities. ~~Except as provided in subsection (B), behavioral health services shall be provided by a RBHA through a contract with ADHS/DBHS. ADHS/DBHS shall:~~

~~1. Be responsible for providing all inpatient emergency behavioral health services for a non-FES member with a psychiatric or substance abuse diagnosis who is enrolled with a contractor in accordance with R9-22-210.01(A)(3);~~

~~2. Be responsible for providing all inpatient emergency behavioral health services for a non-FES/FFS member with a psychiatric or substance abuse diagnosis who is not enrolled with a contractor in accordance with R9-22-210.01(A)(3);~~

~~3. Be responsible for providing all non-inpatient emergency behavioral health services for a non-FES member in accordance with R9-22-210.01;~~

~~4. Be responsible for providing all non-emergency behavioral health services for a non-FES/FFS member;~~

~~5. Contract with a RBHA for the provision of behavioral health services in R9-22-1205 for all Title XIX members under A.R.S. § 36-2907. ADHS/DBHS shall ensure that a RBHA provides behavioral health services to members directly, or through subcontracts, with qualified service providers who meet the qualifications specified in R9-22-1206. If behavioral health services are unavailable within a RBHA's GSA, ADHS/DBHS shall ensure that a RBHA provides behavioral health services to a Title XIX member outside the RBHA's GSA;~~

~~6. Ensure that a member's behavioral health service is provided in collaboration with a member's primary care provider; and~~

~~7. Coordinate the transition of care and medical records, under A.R.S. §§ 36-2903, 36-509, R9-22-512, and in contract, when a member transitions from:~~

~~a. A behavioral health provider to another behavioral health provider,~~

~~b. A RBHA to another RBHA,~~

~~c. A RBHA to a contractor,~~

~~d. A contractor to a RBHA, or~~

~~e. A contractor to another contractor.~~

ADHS is responsible for payment of behavioral health services provided to members, except as specified under subsection (D).

B. ADHS/DBHS may contract with a TRBHA for the provision of behavioral health services for ~~Native American~~ American Indian members. ~~Native American~~ American Indian members may receive covered behavioral health services:

1. From an IHS or tribally operated 638 facility,
2. From a TRBHA, or
3. From a RBHA.

C. Contractor responsibilities. A contractor shall:

1. Refer a member to ~~an~~ a RBHA under the contract terms;
2. Provide EPSDT developmental and behavioral health screening as specified in R9-22-213;
3. ~~Provide inpatient emergency behavioral health services as specified in R9-22-1205 and R9-22-210.01 for a member not yet enrolled with a RBHA or TRBHA and all behavioral health services as specified in contract;~~
4. ~~Provide psychotropic medication services for a member, in consultation with the member's RBHA as needed, for behavioral health conditions specified in contract and within the primary care provider's scope of practice;~~ and

~~5.~~3. Coordinate a member's transition of care and medical records ~~under subsection (A)(7)~~.

D. Administration and CRS responsibilities.

1. The Administration shall be responsible for payment of behavioral health services provided to an ALTCS FFS or an FES member and for behavioral health services provided by IHS and tribally operated 638 facilities. The Administration is also responsible for payment of behavioral health services provided to these members during prior quarter coverage.
2. CRS shall be responsible for payment of behavioral health services provided to members enrolled with CRS.

R9-22-1203. Eligibility for Covered Services

A. Title XIX members. A member determined eligible under A.R.S. § 36-2901(6)(a) or (g) except for the failure to meet U.S. citizenship or qualified alien status requirements, shall receive medically necessary covered services under ~~R9-22-1205 and R9-22-201~~ Article 12 and Article 2.

~~**B.** FES members. A person who would be eligible under A.R.S. § 36-2901(6)(a)(i), A.R.S. § 36-2901(6)(a)(ii), or A.R.S. § 36-2901(6)(a)(iii) except for the failure to meet the U.S. citizenship or qualified alien status requirements under A.R.S. § 36-2903.03(A) and A.R.S. § 36-2903.03(B) is eligible for emergency services only.~~

R9-22-1204. General Service Requirements

A. Services. Behavioral health services include ~~both~~ mental health, ~~and~~ substance abuse, and physical services. Medically necessary services shall be covered and service requirements met as described under Article 2 and Article 5.

~~**B.** Medical necessity. A service shall be medically necessary as provide under R9-22-201.~~

~~**C.** Prior authorization. A service shall be provided to a member under Title 36, Chapter 29, Article 1, by a contractor, subcontractor, or provider consistent with the prior authorization requirements in contract and the following:~~

1. ~~Emergency behavioral health services. A provider is not required to obtain prior authorization for emergency behavioral health services.~~
2. ~~Non-emergency behavioral health services. When a member's behavioral health condition is determined by the provider not to require emergency behavioral health services, the provider shall follow the prior authorization requirements of ADHS/DBHS or the RBHA/TRBHA.~~

~~**D.**~~**B.** Notification to Administration for American Indians enrolled with a tribal contractor. A provider shall notify the Administration no later than 72 hours after an American Indian member enrolled with a tribal contractor presents to a behavioral health hospital for inpatient emergency behavioral health services.

~~EPSDT. For Title XIX members under age 21, EPSDT services include all medically necessary covered behavioral health services.~~

~~**E.** Experimental services. Experimental services and services that are provided primarily for the purpose of research are not covered.~~

~~**F.** Gratuities. A service or an item, if furnished gratuitously to a member, is not covered and payment to a provider shall be denied.~~

~~**G.** GSA. Behavioral health services rendered to a member shall be provided within the RBHA's GSA except when:~~

1. ~~A contractor's primary care provider refers a member to another area for medical specialty care,~~
2. ~~A member's medically necessary covered service is not available within the GSA, or~~
3. ~~A net savings in behavioral health service delivery costs is documented by the RBHA for a member. Undue travel time or hardship for a member or a member's family is considered for a member or a member's family in determining whether there is a net savings.~~

~~**H.** Travel. If a member travels or temporarily resides outside of a behavioral health service area, covered services are restricted to emergency behavioral health care, unless otherwise authorized by the member's RBHA or TRBHA.~~

~~**I.** Non-covered services. If a member requests a behavioral health service that is not covered or is not authorized by a RBHA or TRBHA, an AHCCCS-registered behavioral health service provider may provide the service according to R9-22-702.~~

~~**J.** Referral. If a member is referred outside of a RBHA's or TRBHA's service area to receive authorized, medically necessary behavioral health services, the TRBHA or RBHA is responsible for reimbursement if the claim is otherwise payable under this Chapter.~~

~~**K.**~~**C.** Restrictions and limitations.

1. ~~The restrictions, limitations, and exclusions in this Article do not apply to a contractor, ADHS/DBHS, or a RBHA when electing to provide a noncovered service.~~
2. Room and board is not a covered service unless provided in ~~an~~ a behavioral health inpatient~~, Level 1 sub-acute, or~~

~~residential~~ facility under R9-22-1205.

R9-22-1205. Scope and Coverage of Behavioral Health Services

A. Inpatient behavioral health services. The following inpatient services are covered subject to the limitations and exclusions in this Article and Article 2.

1. Covered inpatient behavioral health services include all behavioral health services, medical detoxification, accommodations and staffing, supplies, and equipment, if the service is provided under the direction of a physician in a Medicare-certified:
   a. General acute care hospital, ~~or~~
   b. Inpatient psychiatric unit in a general acute care hospital, or
   c. Behavioral health hospital.
2. Inpatient service limitations:
   a. Inpatient services, other than emergency services specified in this Section, are not covered unless prior ~~authorized~~ authorization is obtained.
   b. Inpatient services and room and board are reimbursed on a per diem basis. The per diem rate includes all services, except the following licensed or certified providers may bill independently for services:
      i. A licensed psychiatrist,
      ii. A certified psychiatric nurse practitioner,
      iii. A licensed physician assistant,
      iv. A licensed psychologist,
      v. A licensed clinical social worker,
      vi. A licensed marriage and family therapist,
      vii. A licensed professional counselor,
      viii. A licensed independent substance abuse counselor, and
      ix. A ~~behavioral health~~ medical practitioner.
   ~~c. A member age 21 through 64 is eligible for behavioral health services provided in a hospital listed in subsection (A)(1)(b) that meets the criteria for an IMD up to 30 days per admission and no more than 60 days per benefit year as allowed under the Administration's Section 1115 Waiver with CMS.~~

B. ~~Level 1 residential treatment center services~~ Behavioral Health Inpatient facility for children. Services provided in a ~~Level 1~~ Behavioral Health Inpatient facility for children ~~residential treatment center~~ as defined in ~~A.A.C. R9-20-101~~ 9. A.A.C. 10, Article 3 are covered subject to the limitations and exclusions under this Article.

1. ~~Level 1~~ Behavioral Health Inpatient facility for children ~~residential treatment center~~ services are not covered unless provided under the direction of a licensed physician in a licensed ~~Level 1~~ Behavioral Health Inpatient facility for children ~~residential treatment center~~ accredited by an AHCCCS-approved accrediting body as specified in contract.
2. Covered Behavioral Health Inpatient facility for children ~~residential treatment center~~ services include room and board and treatment services for behavioral health and substance abuse conditions.
3. Inpatient ~~Residential~~ Behavioral Health Inpatient facility for children ~~treatment center~~ service limitations.
   a. Services are not covered unless prior authorized, except for emergency services as specified in this Section.
   b. Services are reimbursed on a per diem basis. The per diem rate includes all services, except the following licensed or certified providers may bill independently for services:
      i. A licensed psychiatrist,
      ii. A certified psychiatric nurse practitioner,
      iii. A licensed physician assistant,
      iv. A licensed psychologist,
      v. A licensed clinical social worker,
      vi. A licensed marriage and family therapist,
      vii. A licensed professional counselor,
      viii. A licensed independent substance abuse counselor, and
      ix. A ~~behavioral health~~ medical practitioner.
4. The following may be billed independently if prescribed by a provider as specified in this Section who is operating within the scope of practice:
   a. Laboratory services, and
   b. Radiology services~~, and~~.
   ~~c. Psychotropic medication~~.

C. Covered ~~Level 1~~ Inpatient sub-acute agency services. Services provided in a ~~Level 1~~ inpatient sub-acute ~~agency~~ facility as defined in ~~A.A.C. R9-20-101~~ 9 A.A.C. 10, Article 1 are covered subject to the limitations and exclusions under this Article.

1. ~~Level 1~~ Inpatient sub-acute ~~agency~~ facility services are not covered unless provided under the direction of a licensed physician in a licensed ~~Level 1~~ inpatient sub-acute ~~agency~~ facility that is accredited by an AHCCCS-approved accrediting body ~~as specified in contract~~.

2. Covered ~~Level 1~~ Inpatient sub-acute ~~agency~~ facility services include room and board and treatment services for behavioral health and substance abuse conditions.
3. Services are reimbursed on a per diem basis. The per diem rate includes all services, except the following licensed or certified providers may bill independently for services:
   a. A licensed psychiatrist,
   b. A certified psychiatric nurse practitioner,
   c. A licensed physician assistant,
   d. A licensed psychologist,
   e. A licensed clinical social worker,
   f. A licensed marriage and family therapist,
   g. A licensed professional counselor,
   h. A licensed independent substance abuse counselor, and
   i. A ~~behavioral health~~ medical practitioner.
4. The following may be billed independently if prescribed by a provider specified in this Section who is operating within the scope of practice:
   a. Laboratory services, and
   b. Radiology services.~~, and~~
   ~~c. Psychotropic medication~~.
5. ~~A member age 21 through 64 is eligible for behavioral health services provided in a Level 1 sub-acute agency that meets the criteria for an IMD for up to 30 days per admission and no more than 60 days per benefit year as allowed under the Administration's Section 1115 Waiver with CMS. These limitations do not apply to a member under age 21 or age 65 or over.~~

D. ~~Level 2 behavioral health residential agency services. Services provided in a Level 2 behavioral health residential agency are covered subject to the limitations and exclusions in this Article.~~

1. ~~Level 2 behavioral health residential agency services are not covered unless provided by a licensed Level 2 behavioral health residential agency as defined in A.A.C. R9-20-101.~~
2. ~~Covered services include all services except room and board.~~
3. ~~The following licensed or certified providers may bill independently for services:~~
   a. ~~A licensed psychiatrist,~~
   b. ~~A certified psychiatric nurse practitioner,~~
   c. ~~A licensed physician assistant,~~
   d. ~~A licensed psychologist,~~
   e. ~~A licensed clinical social worker,~~
   f. ~~A licensed marriage and family therapist,~~
   g. ~~A licensed professional counselor,~~
   h. ~~A licensed independent substance abuse counselor, and~~
   i. ~~A behavioral health medical practitioner.~~

E. ~~Level 3 behavioral~~ Behavioral health residential ~~agency~~ facility services. Services provided in a licensed ~~Level 3~~ behavioral health residential ~~agency~~ facility as defined in 9 A.A.C. 10, Article 1 ~~A.A.C. R9-20-101~~ are covered subject to the limitations and exclusions under this Article.

1. ~~Level 3 behavioral~~ Behavioral health residential ~~agency~~ facility services are not covered unless provided by a licensed ~~Level 3~~ behavioral health residential ~~agency~~ facility.
2. Covered services include all non-prescription drugs as defined in A.R.S. § 32-1901, non-customized medical supplies, and clinical ~~supervision~~ oversight or direct supervision of the ~~Level 3~~ behavioral health residential ~~agency~~ facility staff whichever is applicable. Room and board are not covered services.
3. The following licensed and certified providers may bill independently for services:
   a. A licensed psychiatrist,
   b. A certified psychiatric nurse practitioner,
   c. A licensed physician assistant,
   d. A licensed psychologist,
   e. A licensed clinical social worker,
   f. A licensed marriage and family therapist,
   g. A licensed professional counselor,
   h. A licensed independent substance abuse counselor, and
   i. ~~A behavioral health medical practitioner.~~

~~F.~~E. Partial care. Partial care services are covered subject to the limitations and exclusions in this Article.

1. Partial care services are not covered unless provided by a licensed and AHCCCS-registered behavioral health agency that provides a regularly scheduled day program of individual member, group, or family activities that are designed to improve the ability of the member to function in the community. Partial care services include basic, therapeutic, and

medical day programs.

2. Partial care services. Educational services that are therapeutic and are included in the member's behavioral health treatment plan are included in per diem reimbursement for partial care services.

~~G.~~**F.** Outpatient services. Outpatient services are covered subject to the limitations and exclusions in this Article and Article 2.

1. Outpatient services include the following:
   a. Screening provided by a behavioral health professional or a behavioral health technician as defined in R9-22-1201;
   b. A ~~behavioral health evaluation~~ behavioral health assessment provided by a behavioral health professional or a behavioral health technician;
   c. Counseling including individual therapy, group therapy, and family therapy provided by a behavioral health professional or a behavioral health technician;
   d. Behavior management services as defined in R9-22-1201; and
   e. Psychosocial rehabilitation services as defined in ~~R9-22-102~~ R9-22-201.
2. Outpatient service limitations.
   a. The following licensed or certified providers may bill independently for outpatient services:
      i. A licensed psychiatrist;
      ii. A certified psychiatric nurse practitioner;
      iii. A licensed physician assistant as defined in R9-22-1201;
      iv. A licensed psychologist;
      v. A licensed clinical social worker;
      vi. A licensed professional counselor;
      vii. A licensed marriage and family therapist;
      viii. A licensed independent substance abuse counselor;
      ix. A ~~behavioral health~~ medical practitioner; and
      x. An outpatient treatment center or substance abuse transitional facility ~~clinic or a Level IV transitional agency~~ licensed under ~~9 A.A.C. 20, Article 1~~ 9 A.A.C. 10, Article 14, that is an AHCCCS-registered provider.
   b. A behavioral health practitioner not specified in subsections ~~(G)(2)(a)(i) through (x)~~ (F)(2)(a)(i) through (x), who is contracted with or employed by an AHCCCS-registered behavioral health agency shall not bill independently.

~~H.~~**G.** Emergency behavioral health services are covered subject to the limitations and exclusions under this Article. In order to be covered, behavioral health services shall be provided by qualified service providers under R9-22-1206. ADHS/DBHS shall ensure that emergency behavioral health services are available 24 hours per day, seven days per week in each GSA for an emergency behavioral health condition for a non-FES member as defined in ~~R9-22-102~~ R9-22-201.

~~I.~~**H.** Other covered behavioral health services. Other covered behavioral health services include:

1. Case management as defined in ~~R9-22-1201~~ 9 A.A.C. 10, Article 1;
2. Laboratory and radiology services for behavioral health diagnosis and medication management;
3. ~~Psychotropic medication and related medication~~ Medication;
4. Monitoring, administration, and adjustment for psychotropic medication and related medications;
5. Respite care as described within subsection ~~(K)~~ (J);
6. Behavioral health therapeutic home care services provided by a RBHA in a professional foster home defined in 6 A.A.C. 5, Article 58 or in ~~a~~ an adult behavioral health ~~adult~~ therapeutic home as defined in ~~9 A.A.C. 20, Article 1~~ 9 A.A.C. 10, Article 1;
7. ~~Personal care services, including assistance with daily living skills and tasks, homemaking, bathing, dressing, food preparation, oral hygiene, self-administration of medications, and monitoring of the behavioral health recipient's condition and functioning level provided by a licensed and AHCCCS-registered behavioral health agency or a behavioral health professional, behavioral health technician, or behavioral health paraprofessional as defined in 9 A.A.C. 20, Article 19 A.A.C. 10, Article 1; and~~
8. Other support services to maintain or increase the member's self-sufficiency and ability to live outside an institution.

~~J.~~**I.** Transportation services. Transportation services are covered under R9-22-211.

~~K.~~**J.** Limited Behavioral Health services. Respite services are limited to no more than 600 hours per benefit year.

R9-22-1206. ~~General Provisions and Standards for Service Providers~~ Repealed

~~A. Qualified service provider. A qualified behavioral health service provider shall:~~
~~1. Have all applicable state licenses or certifications, or comply with alternative requirements established by the Administration;~~
~~2. Register with the Administration as a service provider;~~
~~3. Comply with all requirements under Article 5 and this Article.~~
~~4. Register with ADHS/DBHS as a behavioral health service provider, and~~
~~5. Contract with the appropriate RBHA/TRBHA.~~
~~B. Quality and utilization management.~~

~~1. Service providers shall cooperate with the quality and utilization management programs of a RBHA, a TRBHA, a contractor, ADHS/DBHS, and the Administration as specified in this Chapter and in contract.~~
~~2. Service providers shall comply with applicable procedures under 42 CFR 456, as of October 1, 2006, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol St., NW, Washington, DC 20401. This incorporation contains no future editions or amendments.~~

R9-22-1207. General Provisions for Payment

~~**A.** Payment to ADHS/DBHS. The Administration shall make a monthly capitation payment to ADHS/DBHS based on the number of acute members at the beginning of each month. The Administration shall incorporate ADHS'/DBHS' administrative costs into the capitation payment.~~

~~**B.**~~**A.** Claims submissions.

~~1. ADHS/DBHS shall require all service providers to submit clean claims no later than the time-frame specified in contract with the Administration.~~

~~2.~~1. A provider of behavioral health services shall submit a claim for non-emergency behavioral health services provided to a member ~~enrolled in a RBHA~~ to the appropriate RBHA~~, and if not enrolled in a RBHA, to ADHS/DBHS~~.

~~3.~~2. A provider of behavioral health services shall submit a claim for non-inpatient emergency behavioral health services provided to a member ~~enrolled in a RBHA~~ to the appropriate RBHA~~, and if not enrolled in a RBHA, to ADHS/DBHS~~.

~~4.~~3. A provider of behavioral health services shall submit a claim for non-inpatient emergency behavioral health services provided to a member enrolled in a TRBHA to the Administration.

~~5.~~4. A provider of behavioral health services shall submit a claim for non-emergency behavioral health services provided to a member enrolled in a TRBHA to the Administration.

~~6.~~5. A provider of emergency behavioral health services, that are the responsibility of ADHS/DBHS or a contractor, shall submit a claim to the entity responsible for emergency behavioral health services under R9-22-210.01(A).

~~7.~~6. A provider shall comply with the time-frames and other payment procedures in Article 7 of this Chapter, if applicable, and A.R.S. § 36-2904.

~~8.~~7. ADHS/DBHS or a contractor, whichever entity is responsible for covering behavioral health services, shall cost avoid any behavioral health service claims if it establishes the existence or probable existence of first-party liability or third-party liability.

~~**C.**~~**B.** Prior authorization. Payment to a provider for behavioral health services or items requiring prior authorization may be denied if a provider does not obtain prior authorization from a RBHA, ADHS/DBHS, a TRBHA, the Administration or a contractor.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

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

[R14-189]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) — **Rulemaking Action**

R9-28-1101	Amend
R9-28-1102	Amend
R9-28-1103	Amend
R9-28-1104	Amend
R9-28-1105	Amend
R9-28-1106	Amend
R9-28-1107	Repeal

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. §§ 36-2903.01(F), 36-2932(M)

Implementing statute: A.R.S. §§ 36-2903.01(F), 36-2907, 36-2907(F) and Laws 2013, First Special Session, Chapter 10, §13.

3. The effective date of the rule:

January 4, 2015

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the

final rulemaking package:

Notice of Rulemaking Docket Opening: 20 A.A.R. 2184, August 15, 2014

Notice of Proposed Rulemaking: 20 A.A.R. 2172, August 15, 2014

5. The agency's contact person who can answer questions about the rulemaking:

Name: Mariaelena Ugarte

Address: AHCCCS
701 E. Jefferson St.
Phoenix, AZ 85034

Telephone: (602) 417-4693

Fax: (602) 253-9115

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6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

HB 2634 (Law 2011, Chapter 96) requires the Arizona Department of Health Services (ADHS) to reduce monetary or regulatory costs on persons or individuals receiving behavioral health services, streamline the regulation process, and facilitate licensure of integrated health programs that provide both behavioral and physical health services.

The Administration cross references ADHS rules and must update its rules to correctly reference changes made by ADHS. In addition, changes recommended during a five-year review, report effective November 3, 2009, of these rules have also been made along with any technical changes required to make the rulemaking clear. Such as:

R9-28-1101 – Clarified by:

- Making this section specific to definitions that apply to this Article, and removing the references to statute in Subsections (1) and (2).
- Moving subsection (4), (6), (7), and (8) to a new rule describing the ALTCS BH requirements that apply to an American Indian would be clearer.
- Where the term "Native American" is used, it should be replaced with the term "American Indian" which is culturally sensitive and used by federal law.

R9-28-1102 – Clarified:

- Subsections (A) and (B) where it refers to "provide" behavioral health services; program contractors or tribal contractors do not provide behavioral health services, they arrange for the provision of these services.
- Subsection (D) needs the term "medically necessary" added to the sentence that begins "shall authorize (insert) behavioral health services".

R9-28-1104 - After review of this rule, the Administration recommends an amendment to this rule to make it concise by removing or updating:

- Subsection (A), which defines behavioral health services, already exists in R9-22-1201 and R9-20-101.
- Subsection (G), describing the notification to the Administration for Native Americans, should be moved to a rule that specifies the ALTCS BH requirements that apply to an American Indian.
- Subsection (K), describing that EPSDT services include covered behavioral health services, should be removed since the requirement to provide behavioral health services to an EPSDT member is referred to in R9-22-213 as cross-referenced by R9-28-202.
- Subsection (L), describing that experimental services are for purposes of research and not a behavioral health service, can be removed since the same information is defined in R9-22-101 and described in R9-22-202 and cross-referenced by R9-28-202.
- Subsection (M), describing gratuities as a non-covered service, can be removed since this provision is already addressed in R9-22-202 and cross-referenced by R9-28-202.

R9-28-1106 – After review of this rule, the Administration recommends that the title of the rule be changed to "Standards for Service Providers".

Certain recommended changes were not made as described in the five-year report approved in November 2009, such as:

R9-28-1101 - Subsection (5) placement in R9-28-1102 was not made since R9-28-1102 does not refer to case management responsibilities.

R9-28-1102 - The part of Subsection (B) that refers to an "EPD Native American member residing…" recommended to be replaced with "…an individual enrolled with behavioral health services" was no longer necessary since after

reading the verbiage of the section it was clear. All AHCCCS individuals receive behavioral health services and are not "enrolled".

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did 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:

A study was not referenced or relied upon when revising the regulations.

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

Not applicable

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

The Administration anticipates minimal economic impact on the implementing agency, small businesses and consumers; because this rulemaking was made for clarification and technical changes required as a result of ADHS rule changes. The changes made in this proposed rulemaking are not substantive changes.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

No significant changes were made between the proposed rulemaking and the final rulemaking. The changes that were made were as a result of recommendations made by GRRC staff.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

No comments were received as of the close of the comment period on September 15, 2014.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

No other matters are applicable.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

Not applicable

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

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

ARTICLE 11. BEHAVIORAL HEALTH SERVICES

Section
R9-28-1101. General Requirements
R9-28-1102. ~~Program~~ ALTCS Contractor or Tribal Contractor Responsibilities
R9-28-1103. Eligibility for Covered Services
R9-28-1104. General Service Requirements
R9-28-1105. Scope of Behavioral Health Services
R9-28-1106. ~~General Provisions and~~ Standards for Service Providers

R9-28-1107. ~~General Provisions for Payment~~ Repeal

ARTICLE 11. BEHAVIORAL HEALTH SERVICES

R9-28-1101. General Requirements

General requirements. The following general requirements apply to behavioral health services provided under this Article, and Chapter 22 subject to all exclusions and limitations.

~~1. Administration. The program shall be administered under A.R.S. § 36-2932.~~

~~2. Provision of services. Behavioral health services shall be provided under A.R.S. § 36-2939, this Chapter and 9 A.A.C. 22, Article 12, as applicable~~.

~~3.~~1. Definitions. The definitions in A.A.C. R9-22-1201 and ~~R9-22-102~~ R9-22-101 apply to this Article, in addition to the following definitions:

~~"Case management" means the activities described in R9-28-510.~~

"Case manager" means an individual responsible for coordinating the physical health services or behavioral health services provided to a patient at the health care institution.

"Contractor" means an ALTCS contractor or as previously known as program contractor.

"Cost avoid" means the same as in A.A.C. R9-22-1201.

"Intergovernmental agreement" or "IGA" means an agreement for services or joint or cooperative action between the Administration and a tribal contractor.

"Qualified behavioral health service provider" means a behavioral health service provider that meets the requirements of R9-28-1106.

"Tribal contractor" means a tribal organization (The Tribe) or urban Indian organization defined in 25 U.S.C. 1603 and recognized by CMS as meeting the requirements of 42 U.S.C. 1396d(b), that provides or is accountable for providing the services or delivering the items described in the intergovernmental agreement.

~~4. Enrollment of Native American member. The Administration shall enroll an EPD Native American member with a tribal contractor on a FFS basis if:~~

~~a. The member lives on-reservation of a Native American tribal organization that is an ALTCS tribal contractor, or~~

~~b. The member lived on-reservation of a Native American tribal organization that is an ALTCS tribal contractor immediately before placement in an off-reservation Nursing Facility or an alternative HCBS setting.~~

~~5.~~2. Case management. A tribal contractor shall provide case management services to FFS ~~Native American~~ American Indian members living on or off-reservation as delineated in the IGA.

~~6. Services. A tribal contractor or the Administration may authorize behavioral health services for FFS Native American members enrolled with a tribal contractor as delineated in the intergovernmental agreement.~~

~~7. Enrollment of Native American members off-reservation. Except as provided in R9-28-1101(4)(b), an EPD Native American who resides off-reservation shall be enrolled with an ALTCS program contractor to receive behavioral health services, including case management, under R9-28-415.~~

~~8. Enrollment of developmentally disabled Native American member. A developmentally disabled Native American member who resides on or off-reservation shall be enrolled with the Department of Economic Security's Division of Developmental Disabilities under R9-28-414 and shall receive behavioral health services from the Department of Economic Security's Division of Developmental Disabilities.~~

~~9.~~3. Reimbursement. For FFS ~~Native Americans~~ American Indians, the Administration is exclusively responsible for providing reimbursement for covered behavioral health services that are authorized by a tribal contractor or the Administration under the intergovernmental agreement as specified in this Article. A ~~program~~ contractor is exclusively responsible for providing reimbursement for covered behavioral health services that are authorized by a ~~program~~ contractor as specified in this Article.

R9-28-1102. ~~Program~~ ALTCS Contractor or Tribal Contractor Responsibilities

A. ~~Program~~ ALTCS contractor. A ~~program~~ contractor shall ~~provide~~ arrange for behavioral health services to all enrolled members, including ~~Native American~~ American Indian members who are not enrolled with a tribal contractor ~~under R9-28-1101~~.

B. Tribal contractor. A tribal contractor shall provide behavioral health services to a ~~Native American~~ American Indian member who is enrolled with a tribal contractor as prescribed in R9-28-1101. When a tribal contractor determines that an EPD ~~Native American~~ American Indian member residing on a reservation needs behavioral health services under R9-28-415, the member shall receive services as authorized by the Administration or a tribal contractor under A.A.C. R9-22-1205 from any AHCCCS-registered provider.

C. A program or tribal contractor shall cooperate when a transition of care occurs and ensure that medical records are transferred in accordance with A.R.S. §§ 36-2932, 36-509, and R9-28-514 when a member transitions from:

1. A behavioral health provider to another behavioral health provider,
2. A RBHA or TRBHA to a ~~program~~ contractor,
3. A ~~program~~ contractor or tribal contractor to a RBHA or TRBHA, or
4. A ~~program~~ contractor to a tribal contractor or vice versa.

D. The Administration, a tribal contractor, or a ~~program~~ contractor, as appropriate, shall authorize medical necessary behavioral health services for ~~Native American~~ American Indian members.

R9-28-1103. Eligibility for Covered Services

A. Eligibility for covered services. A member determined eligible under A.R.S. § 36-2934 shall receive medically necessary covered services specified ~~in A.A.C. R9-22-1205 and R9-28-202.~~ under Chapter 22, Article 2 and 12.

B. ~~Limitations.~~ Behavioral health services are covered as specified in ~~A.A.C. R9-22-201 and R9-22-1205~~ Chapter 22, Article 2 and 12.

R9-28-1104. General Service Requirements

A. Services. Behavioral health services include both mental health and substance abuse services and are subject to the provisions under Chapter 22, Article 2 and 12.

B. Enrollment of American Indian member. The Administration shall enroll an EPD American Indian member with a tribal contractor on a FFS basis if:

1. The member lives on-reservation of a American Indian tribal organization that is an ALTCS tribal contractor, or
2. The member lived on-reservation of a American Indian tribal organization that is an ALTCS tribal contractor immediately before placement in an off-reservation Nursing Facility or an alternative HCBS setting.

C. Services. A tribal contractor or the Administration may authorize behavioral health services for FFS American Indian members enrolled with a tribal contractor as delineated in the intergovernmental agreement.

D. Enrollment of American Indian members off-reservation. Except as provided in R9-28-1104(B)(2), an EPD American Indian who resides off-reservation shall be enrolled with an ALTCS contractor to receive behavioral health services, including case management, under R9-28-415.

E. Enrollment of developmentally disabled American Indian member. A developmentally disabled American Indian member who resides on or off-reservation shall be enrolled with the Department of Economic Security's Division of Developmental Disabilities under R9-28-414 and shall receive behavioral health services from the Department of Economic Security's Division of Developmental Disabilities.

~~**B.** Prior authorization for emergency behavioral health services. A provider is not required to obtain prior authorization for emergency behavioral health services.~~

~~**C.** Prohibition against denial of payment. A program contractor, tribal contractor, or the Administration shall not limit or deny payment to an emergency behavioral health provider for emergency behavioral health services to a member for the following reasons:~~

~~1. On the basis of lists of diagnoses or symptoms,~~
~~2. Prior authorization was not obtained, or~~
~~3. The provider does not have a contract.~~

~~**D.** A program contractor or the Administration shall not limit or deny payment to an emergency behavioral health provider for emergency behavioral health services provided to a member if the member received those services as directed by an employee of the program contractor or the Administration.~~

~~**E.** Grounds for denial for persons enrolled with a program or tribal contractor. A program contractor or the Administration may deny payment to an emergency behavioral health provider for emergency behavioral health services for reasons including but not limited to the following:~~

~~1. The claim was not a clean claim,~~
~~2. The claim was not submitted timely, or~~
~~3. The provider failed to provide timely notification to the Administration or the program contractor, as applicable.~~

~~**F.** Notification to program contractor for persons enrolled with a program contractor. A hospital, emergency room provider, or fiscal agent shall notify a program contractor no later than the 11th day from presentation of the member enrolled with a program contractor for emergency inpatient behavioral health services.~~

~~**G.** Notification to Administration for Native Americans enrolled with a tribal contractor. A provider shall notify the Administration no later than 72 hours after a Native American member enrolled with a tribal contractor presents to a hospital for inpatient emergency behavioral health services.~~

~~**H.** Behavioral health evaluation. Subject to A.R.S. § 36-545.06 and R9-28-903, an emergency behavioral health evaluation is covered as an emergency service for a member under this Section if:~~

~~1. Required to evaluate or stabilize an acute episode of mental disorder or substance abuse; and~~
~~2. Provided by a qualified provider who is a behavioral health medical practitioner as defined in A.A.C. R9-22-1201, including a licensed psychologist, a licensed clinical social worker, a licensed professional counselor, or a licensed marriage and family therapist.~~

~~**I.** Post-stabilization requirements for members enrolled with a program contractor.~~

~~1. A program contractor is financially responsible for behavioral health post-stabilization services obtained within or outside the network that have received prior authorization from the program contractor.~~
~~2. The program contractor is financially responsible for behavioral health post-stabilization services obtained within or outside the network that have not received prior authorization from the program contractor, but are administered to~~

maintain the member's stabilized condition within one hour of a request to the program contractor for prior authorization of further post-stabilization services;

3. The program contractor is financially responsible for behavioral health post-stabilization services obtained within or outside the network that have not received prior authorization from the program contractor, but are administered to maintain, improve, or resolve the member's stabilized condition if:
   a. The program contractor does not respond to a request for prior authorization within one hour;
   b. The program contractor authorized to give the prior authorization cannot be contacted; or
   c. The representative of the program contractor and the treating physician cannot reach an agreement concerning the member's care and the program contractor's physician is not available for consultation. The treating physician may continue with care of the member until the program contractor's physician is reached, or:
      i. A program contractor's physician with privileges at the treating hospital assumes responsibility for the member's care;
      ii. A program contractor's physician assumes responsibility for the member's care through transfer;
      iii. A representative of the program contractor and the treating physician reach agreement concerning the member's care; or
      iv. The member is discharged.
4. Transfer or discharge. The attending physician or the provider actually treating the member for the emergency behavioral health condition shall determine when the member is sufficiently stabilized for transfer or discharge and that decision shall be binding on the program contractor.

J. Prior authorization for non-emergency behavioral health services. When a member's behavioral health condition is determined by the provider not to require emergency behavioral health services, the provider shall follow the program contractor's or the Administration's prior authorization requirements.

K. E.P.S.D.T. services. For Title XIX members under age 21, E.P.S.D.T. services shall include all medically necessary Title XIX-covered behavioral health services to a member.

L. Experimental services. Experimental services and services that are provided primarily for the purpose of research are not covered.

M. Gratuities. A service or an item, if furnished gratuitously to a member by a provider, is not covered and payment to a provider shall be denied.

N. GSA. Behavioral health services rendered to a member enrolled with a program contractor shall be provided within the program contractor's GSA except when:
1. A primary care provider refers a member to another area for medical specialty care;
2. A member's medically necessary covered service is not available within the GSA;
3. A net savings in behavioral health service delivery costs can be documented by the program contractor for a member. Undue travel time or hardship shall be considered for a member or a member's family; or
4. A member is placed by the program contractor in a NF or an Alternative HCBS setting located out of the program contractor's GSA, but remains enrolled with that program contractor.

O. Travel. If a member travels or temporarily resides outside of a program contractor's GSA, covered services are restricted to emergency behavioral health care, unless authorized by the member's program contractor.

P. Non-covered services. If a member requests a behavioral health service that is not covered or is not authorized by a program contractor, the tribal contractor, or the Administration, the behavioral health service may be provided by an AHCCCS-registered behavioral health service provider according to A.A.C. R9-22-702.

Q. Restrictions and limitations.
1. The restrictions, limitations, and exclusions in this Article do not apply to a program contractor that elects to provide a noncovered service.
2. Room and board is not a covered service unless provided by the Administration or a program contractor in a Level 1, inpatient, sub-acute, or residential center under A.A.C. R9-22-1205.

R9-28-1105. Scope of Behavioral Health Services

A. Scope of Services. The provisions of A.A.C. R9-22-1205 are the scope of behavioral health services for a member under this Article. A member in an institutional or Alternative HCBS setting as defined in R9-28-101 may receive covered behavioral health therapeutic home care services from a program contractor.

B. Applicability. References in A.A.C. R9-22-1205 to ADHS/DBHS apply to a program contractor.

R9-28-1106. ~~General Provisions and~~ Standards for Service Providers

A. Applicability. The provisions of A.A.C. R9-22-1206 are the general provisions and standards for service providers. References in A.A.C. R9-22-1206 to ADHS/DBHS or to a RBHA apply to a ~~program~~ contractor.

B. Qualified service provider. A qualified behavioral health service provider shall:
1. Have all applicable state licenses or certifications, or comply with alternative requirements established by the Administration;
2. Register with the Administration as a behavioral health service provider; and

~~3. Comply with all requirements under Article 5 and this Article.~~

B. The Administration or a contractor shall cost avoid any behavioral health service claims if the Administration or the contractor establishes the probable existence of first-party liability or third-party liability.

~~**C.** Quality and utilization management.~~

~~1. Service providers shall cooperate with the program contractor's quality and utilization management programs and the Administration as under R9-28-511 and in contract.~~

~~2. Service providers shall comply with applicable procedures under 42 CFR 456, incorporated by reference in A.A.C. R9-22-1206.~~

R9-28-1107. ~~General Provisions for Payment~~ Repealed

~~**A.** Prior authorization. For ALTCS members enrolled with a program contractor, payment to a provider for behavioral health services that require prior authorization may be denied as specified in R9-22-705. References in A.A.C. R9-22-705 to a contractor apply to a program contractor.~~

~~**B.** For ALTCS FFS members, payment to a provider for behavioral health services that require prior authorization may be denied if a provider does not obtain prior authorization from a tribal contractor or the Administration, as applicable.~~

~~**C.** The Administration or a program contractor shall cost avoid any behavioral health service claims if the Administration or the program contractor establishes the probable existence of first-party liability or third-party liability.~~

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

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

[R14-190]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) — **Rulemaking Action**

R9-31-1201	Amend
R9-31-1202	Repeal
R9-31-1203	Repeal
R9-31-1204	Repeal
R9-31-1205	Repeal
R9-31-1206	Repeal
R9-31-1207	Repeal

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 36-2903.01(F)

Implementing statute: A.R.S. §§ 36-2903.01(F), 36-2907, 36-2907(F) and Laws 2013, First Special Session, Chapter 10, §13.

3. The effective date of the rule:

January 4, 2015

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 20 A.A.R. 2184, August 15, 2014

Notice of Proposed Rulemaking: 20 A.A.R. 2178, August 15, 2014

5. The agency's contact person who can answer questions about the rulemaking:

Name:	Mariaelena Ugarte
Address:	AHCCCS 701 E. Jefferson St. Phoenix, AZ 85034
Telephone:	(602) 417-4693
Fax:	(602) 253-9115
E-mail:	AHCCCSrules@azahcccs.gov
Web site:	www.azahcccs.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

HB 2634 (Law 2011, Chapter 96) requires the Arizona Department of Health Services (ADHS) to reduce monetary or regulatory costs on persons or individuals receiving behavioral health services, streamline the regulation process, and facilitate licensure of integrated health programs that provide both behavioral and physical health services.

The Administration cross references ADHS rules and must update its rules to correctly reference changes made by ADHS. In addition, changes recommended during a five-year review, report effective November 3, 2009, of these rules have also been made along with any technical changes required to make the rulemaking clear. R9-31-1201 – R9-31-1207 The Administration modified and repealed these sections since a cross-reference was made under R9-31-1201 that all the provisions described under Chapter 22 apply to members covered under this Chapter. Specific recommended changes to subsections were not made since the sections were repealed.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did 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:

A study was not referenced or relied upon when revising the regulations.

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

Not applicable

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

The Administration anticipates minimal economic impact on the implementing agency, small businesses and consumers; because this rulemaking was made for clarification and technical changes required as a result of ADHS rule changes. The changes made in this proposed rulemaking are not substantive changes.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

No significant changes were made between the proposed rulemaking and the final rulemaking. The changes that were made were as a result of recommendations made by GRRC staff.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

No comments were received as of the close of the comment period on September 15, 2014.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

No other matters are applicable.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

Not applicable

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rules follows:

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

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

ARTICLE 12. BEHAVIORAL HEALTH SERVICES

Section
R9-31-1201. ~~General~~ Requirements
R9-31-1202. ~~ADHS and Contractor Responsibilities~~ Repealed
R9-31-1203. ~~Eligibility for Covered Services~~ Repealed
R9-31-1204. ~~General Service Requirements~~ Repealed
R9-31-1205. ~~Scope of Behavioral Health Services~~ Repealed
R9-31-1206. ~~General Provisions and Standards for Service Providers~~ Repealed
R9-31-1207. ~~General Provisions for Payment~~ Repealed

ARTICLE 12. BEHAVIORAL HEALTH SERVICES

R9-31-1201. ~~General~~ Requirements

~~General requirements.~~ The ~~following general~~ requirements, services and definitions under Chapter 22, Article 2 and Article 12 apply to behavioral health services provided under this Article~~, subject to all exclusions and limitations:~~

~~1. Administration. The program shall be administered as specified in A.R.S. § 36-2982.~~
~~2. Provision of services. Behavioral health services shall be provided as specified in A.R.S. § 36-2989 and this Chapter.~~
~~3. Definitions. The following definitions apply to this Article:~~
~~a. "Agency" for the purposes of this Article, means the same as in A.A.C. R9-22-1201.~~
~~b. "Behavior management services" means the same as in A.A.C. R9-22-1201.~~
~~c. "Behavioral health adult therapeutic home" means the same as in A.A.C. R9-22-1201.~~
~~d. "Behavioral health therapeutic home care services" means the same as in A.A.C. R9-22-1201.~~
~~e. "Behavioral health evaluation" means the same as in A.A.C. R9-22-1201.~~
~~f. "Behavioral health medical practitioner" means the same as in A.A.C. R9-22-1201.~~
~~g. "Behavioral health professional" means the same as in A.A.C. R9-20-101.~~
~~h. "Behavioral health service" means the same as in A.A.C. R9-22-1201.~~
~~i. "Behavioral health technician" means the same as in A.A.C. R9-22-1201.~~
~~j. "Certified psychiatric nurse practitioner" means the same as in A.A.C. R9-22-1201.~~
~~k. "Client" means the same as in A.A.C. R9-22-1201.~~
~~l. "Cost avoid" means the same as in A.A.C. R9-22-1201.~~
~~m. "Health care practitioner" means the same as in A.A.C. R9-22-1201.~~
~~n. "Licensee" means the same as in A.A.C. R9-22-1201.~~
~~o. "OBHL" means the same as in A.A.C. R9-20-101.~~
~~p. "Partial care" means the same as in A.A.C. R9-22-1201.~~
~~q. "Physician assistant" means the same as in A.A.C. R9-22-1201.~~
~~r. "Psychiatrist" means the same as in A.A.C. R9-22-1201.~~
~~s. "Psychologist" means the same as in A.A.C. R9-22-1201.~~
~~t. "Qualified behavioral health service provider" means the same as in A.A.C. R9-22-1201.~~
~~u. "Residual functional deficit" means the same as in A.A.C. R9-22-1201.~~
~~v. "Respite" means the same as in A.A.C. R9-22-1201.~~
~~w. "Substance abuse" means the same as in A.A.C. R9-22-102.~~
~~x. "TRBHA" or "Tribal Regional Behavioral Health Authority" means the same as in A.A.C. R9-22-1201.~~

R9-31-1202. ~~ADHS and Contractor Responsibilities~~ Repealed

~~A. ADHS responsibilities. Behavioral health services shall be provided by a RBHA through a contract with ADHS/DBHS. ADHS/DBHS shall contract with a RBHA for the provision of behavioral health services in R9-22-1205 for all Title XXI members as specified in A.R.S. § 36-2989. ADHS/DBHS, the RBHA's, TRBHA's or subcontractors shall provide behavioral health services to Title XXI members in accordance with R9-22-1202.~~
~~B. ADHS/DBHS may contract with a TRBHA for the provision of covered behavioral health services for Native American members. Native American members may receive covered behavioral health services:~~
~~1. From an IHS facility,~~
~~2. From a TRBHA, or~~

~~3. From a RBHA when referred off-reservation.~~

~~**C.** ADHS/DBHS, the RBHA's, TRBHA's, subcontractors of ADHS/DBHS, and AHCCCS acute care contractors shall cooperate as specified in contract when a transition from one entity to another becomes necessary.~~

R9-31-1203. ~~Eligibility for Covered Services~~ Repealed

~~**A.** Eligibility for covered services. A member determined eligible under A.R.S. § 36-2981 shall receive medically necessary covered services specified in R9-22-1205.~~

~~**B.** Limitations. Behavioral health services are covered as specified in R9-22-201 and R9-22-1205.~~

R9-31-1204. ~~General Service Requirements~~ Repealed

~~**A.** Services. Behavioral health services include both mental health and substance abuse services.~~

~~**B.** Medical necessity. A service shall be medically necessary as under R9-31-201.~~

~~**C.** Prior authorization. A provider shall comply with the prior authorization requirements of the contractor and the following:~~

~~1. Emergency behavioral health services. A provider is not required to obtain prior authorization for emergency behavioral health services.~~

~~2. Non-emergency behavioral health services. When a member's behavioral health condition is determined not to require emergency behavioral health services, the provider shall follow the prior authorization requirements of a contractor.~~

~~**D.** Experimental services. Experimental services and services that are provided primarily for the purpose of research are not covered.~~

~~**E.** Gratuities. A service or an item, if furnished gratuitously to a member, is not covered and payment to a provider shall be denied.~~

~~**F.** GSA. Behavioral health services rendered to a member shall be provided within the RBHA's GSA except when:~~

~~1. A contractor's primary care provider refers a member to another area for medical specialty care,~~

~~2. A member's medically necessary covered service is not available within the GSA, or~~

~~3. A net savings in behavioral health service delivery costs can be documented by the RBHA for a member. Undue travel time or hardship shall be considered for a member or a member's family.~~

~~**G.** Travel. If a member travels or temporarily resides outside of a behavioral health service area, covered services are restricted to emergency behavioral health care, unless otherwise authorized by a member's RBHA.~~

~~**H.** Non-covered services. If a member requests a behavioral health service that is not covered by Title XXI or is not authorized by a RBHA or TRBHA, the behavioral health service may be provided by an AHCCCS registered behavioral health service provider under the provisions of R9-22-702.~~

~~**I.** Referral. If a member is referred outside of a RBHA or TRBHA GSA to receive authorized medically necessary behavioral health services, the RBHA or TRBHA is responsible for reimbursement, if the claim is otherwise payable under these rules.~~

~~**J.** Restrictions and limitations.~~

~~1. The restrictions, limitations, and exclusions in this Article do not apply to a contractor, ADHS/DBHS, or a RBHA when electing to provide a noncovered service.~~

~~2. Room and board is not a covered service unless provided in an inpatient, Level 1, sub-acute, or residential facility under R9-22-1205.~~

R9-31-1205. ~~Scope of Behavioral Health Services~~ Repealed

~~The provisions of R9-22-1205 apply to the scope and coverage of behavioral health services under this Article, but an applicant or member is not eligible to receive covered behavioral health services if in an IMD at the time of application or at the time of redetermination.~~

R9-31-1206. ~~General Provisions and Standards for Service Providers~~ Repealed

~~**A.** The provisions of R9-22-1206 apply to the general provisions and standards for a behavioral health service provider under this Article.~~

~~**B.** A qualified behavioral service provider shall comply with all requirements under Article 5 of this Chapter and this Article.~~

R9-31-1207. ~~General Provisions for Payment~~ Repealed

~~**A.** Payment to ADHS/DBHS. The Administration shall make a monthly capitation payment to ADHS/DBHS based on the number of acute care members at the beginning of each month. ADHS/DBHS' administrative costs shall be incorporated into the capitation payment.~~

~~**B.** Claims submissions.~~

~~1. ADHS/DBHS shall require all service providers to submit clean claims no later than the time-frame specified in ADHS/DBHS' contract with the Administration.~~

~~2. Behavioral health service providers shall submit claims according to the payment provisions in A.A.C. R9-22-1207.~~

~~**C.** Prior authorization. Payment to a provider for behavioral health services or items requiring prior authorization may be denied if a provider does not obtain prior authorization from a RBHA, ADHS/DBHS, a TRBHA, or a contractor.~~

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 3210.) The Governor's Office authorized the notice to go through the rulemaking process on June 24, 2011.

[R14-187]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) — **Rulemaking Action**

R17-5-601	Amend
R17-5-602	Amend
R17-5-603	Amend
R17-5-604	Amend
R17-5-605	Amend
R17-5-606	Amend
R17-5-607	Amend
R17-5-608	Amend
R17-5-609	Amend
R17-5-610	Amend
R17-5-611	Amend
R17-5-612	Amend
R17-5-613	Amend
R17-5-701	Amend
R17-5-702	Amend
R17-5-703	Amend
R17-5-704	Amend
R17-5-705	Amend
R17-5-706	Amend
R17-5-707	Amend
R17-5-708	Amend

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. §§ 28-366, 28-1462 and 28-1465

Implementing statute: A.R.S. §§ 28-1301, 28-1461 through 28-1467

3. The effective date of the rules:

April 1, 2015. The Department is requesting a delayed effective date for the rules.

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Implementation of the rules will require the Department and ignition interlock manufacturers and installers to make extensive computer programming changes to count missed rolling retests, and modify the notification process for a participant. In addition, ignition interlock device manufacturers may choose to manufacture new ignition interlock devices. All ignition interlock devices are required to undergo laboratory testing and meet more stringent device specifications. In order to allow adequate time for the Department and manufacturers to complete necessary computer programming and ignition interlock manufacturers to test and manufacture ignition interlock devices, the Department requests an effective date for all the rules of April 1, 2015 under the provisions of A.R.S.§ 41-1032(B). The delayed effective date will allow the Department's computer system to be reprogrammed to count participant missed rolling retests and send notification to a participant whose ignition interlock period is extended.

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 19 A.A.R. 2858, September 20, 2013
Notice of Proposed Rulemaking: 20 A.A.R. 1748, July 11, 2014

5. The agency's contact person who can answer questions about the rulemaking:

Name:	Jane McVay
Address:	Department of Transportation Government Relations and Policy Development Office 206 S. 17th Ave., MD 140A Phoenix, AZ 85007
Telephone:	(602) 712-4279
Fax:	(602) 712-3232
E-mail:	jmcvay@azdot.gov
Web site:	http://www.azdot.gov/docs/default-source/libraries/current-rulemaking-activity.pdf?sfvrsn=16

Please visit the ADOT web site to track progress of these rules and any other agency rulemaking matters.

6. An agency's justification and reason why rules should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

The Department's reasons for initiating this rulemaking are to implement rule changes required by SB 1200, Ch. 341, Laws 2011 § 17, and to improve ignition interlock data reporting, and the ignition interlock program that is administered by ADOT. A.R.S. § 28-1465 requires adoption of rules as the Director deems necessary to administer and enforce ignition interlock statutes and to certify and decertify ignition interlock device manufacturers and installers, including a rule permitting civil penalties against an installer or an ignition interlock manufacturer who fails to properly report ignition interlock data to the Director in the manner prescribed by the Director.

The Department held three stakeholder meetings with manufacturers and installers prior to filing the proposed rules to discuss possible rule changes. Manufacturers and installers expressed concerns about the amount of civil penalties that the Department proposed in the draft rules that could be imposed for improper reporting, and whether the civil penalties would be imposed fairly. In response to those concerns, the Department decided that the best alternative was to issue written notice to a reporting manufacturer or a reporting installer when improper reporting occurs and allow ten business days for compliance. If the installer fails to remedy the issues identified in the notice, the Director may cancel the certification of the manufacturer or the installer.

The Department requested that all installers work closely with their respective device manufacturer to ensure successful implementation of the electronic reporting system. The Department has designed system enhancements to improve ignition interlock device data reporting, eliminate erroneous violation reporting that may extend the required ignition interlock device period, and facilitate improved communication between manufacturers, installers, and the Department.

These rules amend existing rules on ignition interlock device manufacturers and installers. The rules provide program reporting requirements and define improper reporting by manufacturers and installers, and require reporting manufacturers and reporting installers to screen participant data records of ignition interlock device use. Ignition interlock installers are required to undergo annual recertification. Beginning April 1, 2015, for a new installation of an ignition interlock device or replacement of a device, the device must meet or exceed the 2013 Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIID's) from the National Highway Traffic Safety Administration (NHTSA). Manufacturers will be required to submit a new application and a new laboratory test on or before April 1, 2015, showing that each ignition interlock device meets these NHTSA requirements. The rules also lower the startup set point value, or alcohol concentration value that disables an ignition interlock device, from 0.030 g/210 liters of breath to 0.020 g/210 liters of breath.

In addition, the rules also establish a rolling retest standard for an ignition interlock participant. A missed rolling retest occurs when a participant refuses or fails to provide a valid and substantiated breath sample in response to a requested rolling retest if not followed by the participant providing a valid and substantiated breath sample within 6 minutes. Beginning April 1, 2015, the Department will extend a participant's ignition interlock device period for six months for a participant who misses or refuses to take a set of four missed rolling retests within the participant's ignition interlock period.

The rule revision process included a review of the ignition interlock statutes and rules, and an internal audit of ignition interlock device cases and reporting data. The Department determined that of the total ignition interlock cases in which a participant requested a hearing from July to September 2013, 96% of possible interlock extensions were voided by the Department's Executive Hearing Office. The most common reasons for voids were failure of the manufacturer or installer to provide a data logger, or insufficient evidence of tampering, such as high or low vehicle voltage.

The rules clarify and distinguish between ignition interlock activities that are a violation and should be reported to the Department, and those activities that are not a violation and should not be reported. Reportable activities include tampering, missing a rolling retest, failing to provide proof of compliance or inspection of the interlock device, attempting to operate a vehicle with an alcohol concentration over 0.08 if a participant is at least 21, or attempting to operate a vehicle with an alcohol concentration over the startup set point for a participant under 21, and removing the device.

The rules allow the Director to send written notice to a reporting manufacturer or a reporting installer that improperly reports participant data. If a reporting manufacturer or a reporting installer fails to comply with the notice within 10 business days, the Department may cancel the certification of a manufacturer or the certification of an installer. The rules indicate the types of valid and substantiated proof of a reportable activity that a manufacturer or its authorized reporting installer is required to provide to the Department. The rules also reduce the time period for a manufacturer or its authorized installer to retain participant records from five to three years. Minor changes were made to modernize the rule drafting style, and improve the clarity, conciseness, and understandability of the rules.

7. A reference to any study relevant to the rules that the agency reviewed and either relied on or did not 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:

ADOT did not review any studies relevant to the rules.

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

Not applicable

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

The rules incorporate best practice guidelines developed by the ignition interlock industry and currently used by device manufacturers conducting business in other states. The Department has certified ignition interlock devices for 10 ignition interlock device manufacturers, has about 220 certified installers, 145 certified fixed-site service centers, and 19 mobile service centers in the state that install and service ignition interlock devices. Approximately 21,800 certified ignition interlock devices are installed on motor vehicles in the state.

The current rules require ignition interlock device manufacturers to oversee the device related activities of their authorized installers. The Department anticipates that manufacturers and installers will experience some cost increases for programming changes and for implementing electronic reporting changes. If any installers or manufacturers have already reprogrammed their devices to the 30-minute period contained in the proposed rules, adoption of a 6-minute period will entail increased programming costs. In addition, the rules also require an ignition interlock device manufacturer to have an established place of business in the state. Several manufacturers that do not currently have an established place of business in Arizona will have increased costs to establish an office where the Department may access required records, or will have increased costs to remodel an existing service center. The annual rent for a manufacturer to establish an office in the state is estimated at $12,000.

The rules require a manufacturer to submit a new application and a new laboratory test to the Department on or before April 1, 2015, indicating that each ignition interlock device meets or exceeds the 2013 NHTSA Model Specifications for ignition interlock devices. Testing devices to these new standards is expected to ensure greater accuracy of the devices. Manufacturers may decide to manufacture a new ignition interlock device that meets these new specifications. Device manufacturing costs are unknown. Manufacturers will be required to pay for a new independent laboratory test, which is estimated to cost $50,000, to test each ignition interlock device model. Ignition interlock manufacturers operate in multiple states, and some manufacturers operate internationally. Many of the states are adopting these specifications, so a manufacturer can spread the laboratory testing and device manufacturing costs over business operations in multiple states.

The Department anticipates that ignition interlock device manufacturers and installers will reduce their computer processing costs as a result of the rule changes through a decrease in communications costs between the responsible reporting entity and the Department. The electronic reporting system records all certified ignition interlock device related information needed for the Department and law enforcement personnel to promptly verify a participant's compliance with the program. The Department expects that manufacturers and authorized installers will experience minimal costs for the initial programming and implementation of updated electronic reporting requirements.

Program participants should benefit significantly by the clarification of reporting provisions, the definition of violation, and the immediate recording of updates and corrections to participant driving records in the Department's ignition interlock program. Ignition interlock program participants will experience an un-quantifiable benefit from the additional controls and protections the proposed rules will provide. The rules should ensure that a participant's requirement to maintain a functioning certified ignition interlock device is not inadvertently extended by the Department as a result of improper reporting by a certified ignition interlock device manufacturer or installer. A participant who fails to provide proof of compliance by not taking required rolling retests will pay additional device-related costs; however, a participant can reduce these costs with compliance. Under the final rules, a participant is required to provide a valid and substantiated breath sample within the time allowed by R17-5-610H). The Department will count one missed rolling retest for a participant who refused or fails to provide a valid and substantiated breath sample within six minutes. The rules allow a period of six minutes for a participant to take a rolling retest. It is extremely important for a participant to comply with the rolling retest requirement. Failure to pass a rolling retest within six

minutes will result in a participant accruing one missed rolling retest. The extent of compliance with this rule is not yet known, however, it is expected that some participants will accrue a set of four missed rolling retests in their ignition interlock periods. A.R.S. § 28-3319(H) provides for a deferment of the remaining time period of a person's ignition interlock period for certain driving under the influence violations that have an ignition interlock requirement if the person meets certain criteria. Those participants who qualify for, and comply with the deferral requirements will pay lower ignition interlock fees due to a shorter ignition interlock period. Availability of the deferral may serve as a positive means to limit the ignition interlock period extensions. Device-related costs are established in a contract between the participant and the manufacturer, and not through these rules. The device fee is set by the ignition interlock manufacturer and ranges from about $65 to $100 monthly, with additional charges set by the manufacturer for lock-outs and other services.

The anticipated economic impact to the Department is moderate, consisting of system programming costs, and providing the resources necessary for the rulemaking. The Department estimates that the system programming changes required to implement the rule changes will cost approximately $65,000.

Extension of a participant's ignition interlock device period due to a violation also increases revenue to ignition interlock manufacturers and authorized installers. The monthly cost for an ignition interlock device is $65 to $100. A participant may be responsible for paying additional costs for other device-related services as established by contract; however, these costs are not established in the rules.

In summary, to make the changes necessary to implement the rules, the Department and manufacturers will absorb some costs. However, the changes benefit current and future participants with an ignition interlock device requirement as a result of improved and more accurate reporting with greater accountability required by reporting manufacturers and installers.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

Non-substantive changes were made throughout the rules to clarify the rules, ensure conformity with the rulemaking format and style requirements of the Administrative Procedure Act, the Office of the Secretary of State, and in response to rule comments from the public and from the Governor's Regulatory Review Council. Necessary cross-reference changes to statutes and rules were also made, as well as changes to rule title headings to conform with rule changes.

The proposed rules established a time period of 45 minutes in which a participant is required to pass a rolling retest. An ignition interlock device notified a participant to take the rolling retest numerous times within a 45-minute period and required that the participant take and pass one rolling test. The Department received numerous written comments to the proposed rules from representatives of the ignition interlock industry and responded to those comments. The consensus of the ignition interlock industry representatives was that the 45-minute time period was too long and should be reduced. The Department reduced this time period from 45 minutes to 30 minutes in the initial final rule submittal to GRRC in response to industry concerns that a participant may drive for long periods of time without being required to take a rolling retest that measures the participant's blood alcohol level. During the GRRC Study Session, ignition interlock manufacturers expressed concern that the requirement for a participant to pass a rolling retest in 30 minutes was too long and jeopardizes public safety. In response to industry concerns, the Department was asked to work with industry to resolve the issue. After consulting on this issue with industry, the Department offered to modify the rules to require a participant to pass a rolling retest after 20 minutes. The industry was not supportive of the 20-minute rolling retest requirement, but supported the rule provisions regarding the ignition interlock device rolling retests that comply with the National Highway Traffic Safety Administration (NHTSA) Model Specifications. Industry supported changing the time period for taking and passing a rolling retest to 6 minutes. The primary reason that industry supports 6 minutes is that a six-minute period falls within the NHTSA testing standard for ignition interlock devices. The proposed rules allow a six-minute period after the device warns a participant to take a rolling retest. In response to industry, the Department has changed R17-5-610(H) that establishes the time period for taking a rolling retest to six minutes.

A participant will receive a six-month extension of the ignition interlock period after the participant accumulates a set of four missed rolling retests during the participant's ignition interlock period. The rule change in the time period in which a participant must pass one rolling retest to six minutes does not change the overall standard. Further, this change protects public safety by shortening the period in which a participant must take and pass a rolling retest. For these reasons, the Department does not consider this change to be a substantial substantive change.

The Department determined that express statutory authority to impose a cease and desist order against a reporting manufacturer or a reporting installer for improper reporting did not exist, and deleted those provisions from the rules. The rules were revised to allow the Department to send written notice to a reporting manufacturer or a reporting installer about improper reporting and allow ten business days for compliance with the notice. If the reporting manufacturer or reporting installer fails to comply with the notice, the Department may cancel the certification of the manufacturer or the installer.

The Department determined that express statutory authority to impose a cease and desist order against a reporting manufacturer or a reporting installer for improper reporting did not exist, and deleted those provisions from the rules. The rules were revised to allow the Department to send written notice to a reporting manufacturer or a reporting

installer about improper reporting and allow ten business days for compliance with the notice. If the reporting manufacturer or reporting installer fails to comply with the notice, the Department may cancel the certification of the manufacturer or the installer.

The Department modified language regarding activities that a manufacturer's authorized installer or a service representative is prohibited from doing when a manufacturer's device certification is cancelled. The proposed rules prohibited manufacturers' authorized installers and service representatives from installing, servicing, and maintaining any certified ignition interlock devices. The Department modified the language to prohibit each authorized installer from installing the device for which certification was cancelled. If a manufacturer's device certification is cancelled, those devices will need to be removed, so further servicing would not be needed. The Department clarified the rules so the prohibition on installation applied to the device for which certification was cancelled. For these reasons, the Department does not regard this change as a substantive substantial change.

The Department removed language in R17-5-609 in the proposed rules that required a manufacturer to determine that each authorized installer is of good moral character and repute. A manufacturer is required to check for an authorized installer's felony convictions in the past five years, which may reveal felony convictions for immoral conduct. Because the requirement to be of good moral character and repute may provide duplicative information as a check for felony convictions would, the provision on good moral character was removed. The Department does not regard this as a substantial substantive change.

Other key revisions included the following:

• Deleting the definition of installer and manufacturer due to existing statutory definitions.

• Moving the time period provisions for a participant to take and pass a requested rolling retest by giving a valid and substantiated breath sample to R17-5-610(H).

• Adding a provision that a participant shall not avoid compliance with the rolling retest requirement by turning off a motor vehicle's ignition. Providing that corrective actions taken by the Department against an installer or manufacturer include cancelling installer or manufacturer certification.

• Providing that corrective actions by the Department against an installer or manufacturer include cancelling installer or manufacturer certification.

• Providing that recertification may be denied rather than cancelled.

• Deleting the requirement for a manufacturer who performs a background records check on the authorized installer to be of good moral character and repute. The rules provide that a background records check should include a check of prior felonies, which is likely to provide moral character violations.

• Adding that reportable activity for participant noncompliance under R17-5-610(F) with a missed rolling retest begins on April 1, 2015, the rule effective date.

• Allowing the Department to request the consent of a manufacturer or an installer for periodic onsite inspections. Clarifying inspection provisions by providing that the Department will conduct an inspection under the provisions of A.R.S. § 41-1009.

• Modifying the title heading of R17-5-704 from "Department-certified Installer Responsibilities" to "Authorized Installer Responsibilities."

• Striking provisions that were not used that allowed the Motor Vehicle Division to require additional standards for installer certification of service representatives.

• Modifying R17-5-705 relating to the proficiency of an installer-certified service representative that could result in corrective action under R17-5-601 and not disciplinary action.

• Modifying appeal provisions for installers and manufacturers to the statutory process and setting a period of 35 days for an installer to seek judicial review from the date when a copy of the decision sought to be reviewed is served upon the party affected unless the court grants a stay pending the outcome of judicial review, and modifying licensing time-frame provisions to conform to licensing time-frame statutes.

• Modifying reference in R17-5-707(G)(4)(a) from certified service representative to installer-certified service representative.

• Clarifying language in R17-5-707(H) referring to prohibiting operation of its service center, not complying with any provision under this Article, and engaging in improper reporting.

• Striking certification of the installer's service center and inserting approval of the installer's service center in R 17-5-707(L).

• In the title heading of R17-5-708, striking "Cease and Desist" and inserting "Notice".

• In R17-5-708, struck language regarding cease and desist authority that was removed from the rules and added language providing for the Department to provide written notice to an authorized installer that improperly reports information to the Department and prescribes the information that will be provided. Adds language providing that if the

authorized reporting installer fails to remedy the issues identified in the notice under R17-5-708(A) in ten business days, the Department may cancel the authorized reporting installer's certification.

• Provides that an installer may appeal denial of recertification. The request for a hearing stays the summary cancellation of an installer's certified activities. The hearing officer's written decision may include denying recertification. Struck references to service centers in R17-5-708.

• In R17-5-708(C)(1), the provision regarding 15 days after receipt of a notice applies to notice of denial of recertification of an installer. A written decision in R17-5-708(C)(3)(b) may be issued by a hearing officer to deny recertification.

• Requires an installer applying for a service center to agree to comply with all provisions in the rules and the ignition interlock statutes. A fixed-site service center must be operated in a facility that performs services consistent with the provisions of Article 7 of the rules.

• Deleting provisions in the rules relating to certification of service centers because the Department does not have statutory authority to certify service centers. Service centers are considered an installer under the rules, and must meet the requirements necessary to maintain installer certification. An installer must follow the procedures for a service center in R17-5-707(G) to operate a service center. Calibration, repair, and other service center activities shall be consistent with the requirements of Article 7. Clarifying that a manufacturer must facilitate immediate replacement of its authorized service center if the installer's certification is cancelled or recertification is denied.

• Clarifying in R17-5-707(G)(5)(a) that an installer shall agree to submit a violation as defined in R17-5-601 regarding participant noncompliance to the Department.

• Inserting language "makes a request" in R17-5-707(G)(8)(c).

• Deleted references throughout the rules to Division and inserted Department.

• Revising provisions in R17-5-708(D) regarding installer certification, denial, or denial of recertification; striking reference to a service center being decertified, adding recertification is denied. R17-5-708(D)(1) is applicable to denial of an application, recertification, or canceling an installer's certification.

11. An agency's summary of the public stakeholder comments made about the rulemaking and the agency response to the comments:

Stakeholder Comment	Department Response
1. Required compliance checks in R17-5-610(D)(1) for a participant at 30, 60, and 90 days, and every 90 days thereafter are problematic and do not allow a participant to learn how to use the ignition interlock device. The reduction in reporting to every 90 days is outside the NHTSA calibration specifications and will create an evidentiary issue voiding any blood alcohol concentration violations that occur after the 30 or 60-day calibrations. This change will reduce the number of violations reported and reporting times, but will not correct the poor reporting processes and protect the citizens. With the 6-month ignition interlock deferment defined in A.R.S. § 28-3319(H), after the 90-day compliance check, no additional reporting is required. Violations that occur after the last compliance check are not submitted once a participant is eligible for device removal and the participant is removed from program monitoring. Any violations reported after the device removal are ignored, increasing the risk of ADOT reinstating a participants' driver license to a person who still is inclined to drink and drive. (Michael Roth, Barry Saunders)	1. A.R.S. § 28-1461(A()(1)(c) requires the participant to provide proof of compliance to the Department at least once every 90 days during the period the person is ordered to use an ignition interlock device. The change in the rule in R17-5-610(D)(1)(b) from "at least once every 60 days" to "at least once every 90 days" is necessary to conform to the above statute. Interlock providers will still be able to require 30, 60, or 90 day compliance checks pursuant to R17-5-610(D)(1)(a) and specify these time periods in their interlock contracts. Under the six-month interlock deferment provision in A.R.S. § 28-3319(H), a participant could be subject to three inspections at 30 days, 60 days, and 90 days, plus the Department requires another compliance inspection before the six-month deferral of the interlock requirement is granted. The provider can require the participant to come in just prior to the end of the deferral. The Department will extend the ignition interlock requirement for any violations recorded at the inspections. The Department is bound by A.R.S. § 28-3319(H), which states all the conditions a person must comply with for the Department to defer the remaining ignition interlock period, which include not operating a vehicle with an alcohol concentration of 0.08 or more two or more times during the period of license restriction or limitation, maintaining a functioning ignition interlock device on all motor vehicles operated, and meeting the requirements of A.R.S. § 28-1461.
2. The commenter recommends that the rules should comply with the NHTSA Model Specifications on calibration. Devices hold their calibration for varying periods of time. The calibration/monitor period should not exceed 37 days (30-day calibration period plus a 7-day grace period). (Michael Roth, Harlan Williams)	2. A.R.S. 28-1461(a)(1)(c) requires a participant to provide proof of compliance to the Department at least once every 90 days. The NHTSA Model Specification requires a device to have minimum calibration stability for 37 days. Calibration intervals may be established by installers for a minimum of 37 days (30 days plus the 7-day lockout), but not to exceed 90 days. Manufacturers can still demonstrate that their devices can maintain their calibration stability for longer periods by testing the device at 60, 90, and 180 days, plus 7 days.

3. All manufacturers should have the same reporting requirements. Some manufacturers have problems with reporting while others do not. (Mike Roth)	3. The rule changes in R17-5-610 require all reporting manufacturers or reporting installers to comply with the same reporting requirements. ADOT has held numerous stakeholder meetings with reporting manufacturers and installers to gather their input on reporting changes and has communicated to them about the reporting requirements. The purpose of the changes is to ensure that the rules define improper reporting, reportable activity, and that the Department has the required proof of a reportable activity.
4. In the definition of missed rolling retest in R17-5-601, the proposed rules require a participant to provide a valid breath sample within a period of 45 minutes. With this time period, a participant does not have the opportunity to acquire learned behavior from using the device, and therefore, the program is less effective. This could allow a third party to blow into the device and allows driving for up to 45 minutes before ADOT records the action as "non-compliance". One commenter recommended a period of 30 minutes, a second commenter recommended 15 minutes, a third commenter recommended a period of 10 minutes, a fourth commenter suggested a maximum period of 10 to 15 minutes before a violation occurs, and a fifth commenter suggested a retest duration of 6 minutes. Granting a driver a 10-minute period prevents distracted driving. A shorter period would allow a person to drink and drive without consequence. Another option is to have a minimum threshold on the number of missed retests than can occur before it creates a violation, such as missing 3 requests before counting as a violation. (Barry Saunders, William Harlan, Justin McCord, James Lewis)	4. The Department proposed several reductions in the time period for successfully passing a rolling retest from 45 minutes in the proposed rules in response to industry concerns about the length of this period (see chronology in item 10). The industry did not support the longer periods. The final rules were submitted with a 6-minute period in R17-5-610(H), which industry supports because it is consistent with the NHTSA standards. Additionally, the Department added clarifying language in R17-5-610 to specify that a participant shall not avoid compliance with the rolling retest by turning off the vehicle. Failure to take and pass a rolling retest in this scenario will count toward the four missed rolling retest criteria that results in a six-month extension of the participant's interlock requirement under A.R.S. § 28-1461(E)(4). The Department believes the four missed rolling retests is a fair standard and each set of four missed rolling retests will result in a six-month extension of the offender's interlock requirement under this proposed rule.
5. The commenter reported that the manufacturer has difficulty getting the ignition interlock devices returned. (Gary Johns)	5. Each participant chooses an ignition interlock provider from whom the participant obtains an ignition interlock device. The contract between the provider and the participant, and not the rules, should specify provisions regarding the return of a device.
6. In regard to the requirement for manufacturers or installers to report their address and phone numbers, the commenter requested that the Department select one or more dates for this information to be reported. (Gary Johns)	6. As prescribed in R17-5-702, the Department has established a recertification process. Once a year, providers will be required to submit applications for all locations currently providing services as part of the re-certification process. Once the applications are approved by the Department, the provider's locations will be certified for one year from the date of approval. Any additional locations that are opened in the course of the year will require an application as part of the initial application process, and then again, along with the rest of the active locations, at the time for re-certification. This will allow the provider to turn in applications for all locations at one time. The requirement in R17-5-702(G) of the manufacturer to inform the Department within 24 hours of any closings is still in effect.
7. The commenter stated that a provider does not need to serve an obnoxious client. (Gary Johns)	7. The Department provides a participant with a list of manufacturers with certified ignition interlock devices and allows the participant to choose a provider. The Department does not mandate that a provider serve a particular participant. The commenter's concern is outside the scope of the rules.
8. The commenter recommends that a participant should be prohibited from receiving a non-ignition interlock driver's license without returning the ignition interlock device to the manufacturer. (Gary Johns)	8. This comment requires a legislative change and is outside the scope of the rules.
9. In the definition of principal place of business in R17-5-601, after "manufacturer" insert "or a manufacturer's authorized provider" to refer to their administrative headquarters. (Harlan Williams)	9. The Department believes this is a good change and is revising the definition of principal place of business as follows: "Principal place of business" means the administrative headquarters of a manufacturer or the manufacturer's authorized installer that is located in Arizona and is not used as a residence.
10. Providers have difficulty getting a Certified Ignition Interlock Device (CIID) returned from towing yards. The commenter requests assistance from the Department's Enforcement and Compliance Division to help secure ignition interlock devices from vehicles that are towed to towing yards. A statute exists on this matter, but local police ignore the situation and state that this is a civil matter. (Gary Johns)	10. Several statutes deal with impoundment of a vehicle. A.R.S. § 28-4848 allows an ignition interlock provider who is denied access to a vehicle by a towing yard to submit a written request to the impounding agency or a law enforcement agency with jurisdiction where the vehicle is stored. A.R.S. § 28-3511 establishes the procedures for removal and impoundment of a vehicle when a person's driver's license is suspended or revoked, or is subject to an ignition interlock requirement, but is not operating a vehicle with an ignition interlock device.

11. If a participant on the deferred driving under the influence program in A.R.S. § 28-3319(H) has 4 missed rolling retests during the 6 to 7 month period, does the deferral cease and does the infraction cause an additional 6-month extension? (Gary Johns)	11. As prescribed in A.R.S. § 28-3319, the participant is required to maintain and meet all requirements in A.R.S. § 28-1461, which requires the Department to extend for 6 months if the person tampers or circumvents the CIID. Any extension that occurs during the first 6 months of the ignition interlock requirement will automatically prevent the participant's interlock requirement from deferring.
12. R17-5-611(A)(1)(b) implies that the provider is responsible for the cost of the tow. Smart Start does not tow and states this in the lease.(Gary Johns)	12. The Department is not proposing changes to this provision. A.R.S. § 28-1462(B)(2) and (B)(3) require rules to be adopted to include provisions to ensure the device is reliable in the range of motor vehicle environments and to ensure accurate operation in an unsupervised environment. The current rule, R17-5-611(A)(1)(b), in an emergency event, provides that an authorized installer shall either provide the technical information required by phone when a participant has a problem with the ignition interlock device, or provide or arrange for towing or roadside assistance if the issue cannot be resolved telephonically. The rule states that the authorized installer must either provide or arrange for towing. The rule does not state who is responsible to pay the towing charges. The contracts with the participant should state who is responsible for towing charges. The devices belong to the manufacturer, who is responsible for ensuring their proper operation and that the device operation does not cause other problems, such as not allowing the vehicle to start. Since a vehicle with a device that is not operating properly may be located in a remote area far away from a service center, the rules include provisions on emergency assistance.
13. The current rule, R17-5-611(B)(2)(a)(i), (ii) requires a new authorized installer to operate a mobile service center within 75 miles of the participant's Arizona residence, or a service center that is a permanent facility within 125 miles of the participant's residence. The commenter stated that these mileage requirements are unrealistic. The commenter asked if the provider should refuse to install a client living beyond these mileage limits. (Gary Johns)	13. The Department does not mandate the provider to take specific clients in an area. The provider may refuse to take a client who lives beyond the 125 or 75-mile limits.
14. The current rule in R17-5-707(F)(4)(a) requires a service center to always be staffed with at least one certified service representative. The commenter stated that this is unrealistic because in some subcontract shops, interlock device installation is not the primary business, and in some rural areas, the shops only handle interlocks on specified days of the week and have few clients. In Article 7, please keep in mind that many providers have several technicians working for them and they move from shop to shop depending on conditions. (Gary Johns)	14. The Department understands that providers have installer-certified service representatives who may move from one service center to another. A provider meets the rule requirements in R17-5-707(G)(4)(a) if the provider has a certified service-representative available to render services to participants as needed. A Department-certified installer must provide to the Department a current list of the names of each of the installer-certified service representatives on a quarterly basis under R17-5-702(I) and to notify the Department within 24 hours after making a change to this list.
15. The commenter recommends the addition of "and collect a minimum breath sample of 1.5L" at the end of R17-5-603(B). (Harlan Williams)	15. The rules incorporate by reference the 2013 NHTSA Model Specifications in R17-5-604(C)(3)(a), which require CIID's to pass a test with a sample volume of 1.5 liters. No rule change is required.
16. The commenter recommends a change in the language in R17-5-603(F)(6)(b) to reduce the six- minute period to five minutes. (Harlan Williams)	16. The Department appreciates the comment, but believes the six-minute period is appropriate and allows the participant to safely take the rolling retest in a variety of driving conditions and situations. Six minutes is in the middle of the prescribed range of 5 to 7 minutes in the 2013 NHTSA Model Specifications for taking a rolling retest.
17. In R17-5-706(F), the commenter requests a change in the language from at least once every 90 days to a 30-day calibration period plus a 7-day grace period. (Harlan Williams)	17. A.R.S. § 28-1461(A)(1)(c) requires the ignition interlock participant to provide proof of compliance to the Department at least once every 90 days during the period the person is ordered to use an ignition interlock device. Interlock providers will still be able to require 30, 60, or 90 day compliance checks plus a seven day grace period pursuant to R17-5-610(D)(1)(a) and specify these time periods in their ignition interlock contracts.
18. In R17-5-708(A), the commenter requests that the language regarding the Director's order strike "at least" five business days and insert "business days." (Harlan Williams)	18. This reference referred to the number of days for a reporting installer or a service center to take action as specified in a cease and desist order from the Department. The Department has removed the cease and desist provisions and has replaced them with written notice to an authorized installer if improper reporting occurs. The authorized installer has ten business days to comply with the notice, which the Department believes allows adequate flexibility for an authorized installer to modify the reporting.

19. Regarding the definition of improper reporting in R17-5-601 and the failure of a manufacturer or its reporting installer to screen and remove invalid or unsubstantiated reporting data, the commenter states that a manufacturer or an installer should never alter, change, or remove data that is part of the interlock data log, and that tampering with evidence is a class 6 felony under A.R.S. § 13-2809. A data log should be kept intact for the court or an administrative law judge to consider. A manufacturer or an installer should not report any data that is not a violation as established by the rules. (Michael Roth)	19. The Department has defined reporting criteria, which includes activities that are included as a violation as prescribed in R17-5-601. Any activities that occur that are violations must be present on the data logger as they occur. The data logger should not be altered or changed and would remain intact if the participant requests a hearing. Review and any necessary actions are taken by the Department pursuant to A.R.S. § 28-1461.
20. The state should not have the manufacturer be the reporting group for the participants that pay the manufacturer. This creates a conflict of interest in which the party that reports has a monetary interest in the outcome. The commenter suggests that the state should solicit a request for proposal for an independent third party, not an interlock manufacturer, to review and process unedited data- loggers from each device for violations. Data- loggers should remain unaltered. (Michael Roth)	20. The Department is the recipient of data reported to it from certified ignition interlock device manufacturers and installers, and has no role in or control over how these private entities internally process the device-related data used to generate their own reports before transmitting such data to the Department under Title 17, Chapter 5, Articles 6 and 7 of the Arizona Administrative Code. The rules require the reporting installer or the reporting manufacturer to submit reportable activity and violations to the Department. The Department reviews the reportable activity and notifies a participant of a violation. The Department sends any participant with a violation a corrective action notice that states that the participant's ignition interlock period will be extended. A participant may request a hearing through the Executive Hearing Office to contest the violation. This provides the participant with due process. The Department has operated the state ignition interlock program since its inception with reporting installers and reporting manufacturers submitting reportable activity from data loggers to the Department. A.R.S. § 28-1461(B) requires installers to electronically report to the Department tampering, circumvention, and blood alcohol violations. The rules comply with the intent of the Legislature to have manufacturers and installers report data to the Department. Reportable activity is electronically submitted to the Department and cannot be altered. Since November 22, 2013, the Department has manually reviewed each instance in which a violation was recorded on a data logger to determine if a violation occurred. Only in instances that involved a violation did the Department extend the participant's ignition interlock period. The Department does not have the authority to seek a request for proposal for an independent third party to review data loggers for violations, which is contrary to the statute, nor does the Department have authority to impose or regulate fees charged by providers. The Legislature is aware of how the program operates and may consider changing the program operation if they believe changes are necessary.
21. The current violation definitions, rule, and reporting periods should remain in effect without further modification. (Michael Roth)	21. The proposed rule is necessary to clarify that refusals or failures to take a rolling retest are an act of non-compliance under A.R.S. § 28-1461, Subsection E, paragraph 4, rather than a case of tampering. Under A.R.S. § 28-1301(9), "Tampering" means an overt or conscious attempt to physically disable, circumvent or otherwise disconnect the certified ignition interlock device from its power source that allows the operator <u>to start</u> the engine without taking and passing the requisite breath test. Refusing or failing to pass a requested rolling retest is an event that falls outside the definition of "tampering" because it is an event that occurs after the operator starts the vehicle. Refusal or failure to perform four rolling retests within the participant's ignition interlock period under the rules will result in a six-month extension of the participant's interlock requirement. Additionally, the proposed rule is necessary to ensure that the interlock providers clearly understand what constitutes proper and improper reporting of alleged violations so that only valid cases of non-compliance or tampering result in an extension of a participant's interlock requirement.
22. The proposed rule changes allow ignition interlock manufacturers to report false violations and determine if the court-ordered ignition interlock will be extended or removed. This violates due process, jeopardizes the safety of citizens, and allows interlock groups to benefit with no recourse. (Michael Roth)	22. The Department has defined reporting criteria, which includes activities defined as a violation in R17-5-601. Any activities that occur that are violations must be present on the data logger as they occur and should not be altered or changed. Review of violations submitted and any necessary actions are taken by the Department pursuant to A.R.S. § 28-1461.

23. A new definition of circumvention is not needed. The definition of circumvention is to bypass or not complete a step to continue a process. Violations that are currently reported as a missed rolling retest are violations of circumvention. (Michael Roth)	23. Circumvention is contained within the definition of tampering in A.R.S. § 28-1301. This citation is cross-referenced as a definition in R17-5-601. Tampering and circumvention are events that occur prior to the car starting, not while the car is moving. Missed rolling retests fall outside the statutory definition of "tampering" because they are an event that occurs after the vehicle is started and as discussed above, the definition of "tampering" involves acts related to the starting of a vehicle. The 2013 NHTSA Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs) define circumvention as: "An attempt to bypass the correct operation of a BAIID, whether by use of an altered breath sample, by starting the vehicle by any means without first providing a breath sample." This definition refers to use of an altered breath sample (having another person blow into the device) or starting the vehicle by another means without providing a breath sample. This definition does not include missing a rolling retest, which occurs after the car starts. The Department does not agree for these reasons that circumvention includes a missed rolling retest.
24. The request to clarify reportable violation was initiated by an internal audit report showing that less than 3% of the cases were valid. The cases were dismissed due to improper reporting by manufacturers, with the missed rolling retest the largest violation category. Improper reporting has been a problem since the program's inception. Having ignition interlock manufacturers report violations has not solved the improper reporting problem. In a 2008 study, Presiding Judge McCormick found that only 3% of over 900 hearings were valid. The solution proposed was not to fix the bad reporting, but to continue to reduce what is reported and when it should be reported. As a result of this study, citizens were told to contact their providers to see if the violation reported was accurate, allowing interlock companies to report incorrectly and to benefit monetarily from false violations. Providers were notified to use a form to request that violations reported to the state as valid violations were reported as valid and to be removed without a hearing or an independent judge. In 2009 ADOT requested participants with corrective action notices to submit receipts and work orders that caused a violation to the Ignition Interlock Unit and not contact the Hearing Office. Ignition interlock manufacturers and installers are not the appropriate group to determine penalties of participants. No other part of the criminal justice system allows one part of the sentencing requirement to be run by private organizations with a monetary gain by extending the interlock requirement. Having interlock companies take the place of administrative law judges did not correct poor reporting. Some providers charge as much as $30 to send the correct information to the state after sending false violations to the state, generating additional revenue for the providers from the lack of proper reporting. (Michael Roth)	24. The Department agrees that reporting by manufacturers and installers has been problematic, but disagrees that missed rolling retests were the largest violation category in the internal audit. The reasons for voiding the extensions were failure of the provider to send a data logger so no evidence existed, insufficient evidence of tampering as defined in A.R.S. § 28-1301(9), high or low voltage issues, and arrival tests. Only a few cases involved missed rolling retests. As a result of the audit, the Department stopped automatically extending participants for a violation and manually reviews all possible violations. A participant has the ignition interlock period extended by six months only for a violation determined by the Department. In response to reporting issues by manufacturers and installers responsible for reporting data to the Department, the Department has modified its reporting procedures several times in the past. The 2007 rule changes provided for electronic rather than paper reporting and provided that a missed rolling retest is a violation. In 2009 when the Ignition Interlock Unit was created, the Unit requested work receipts to indicate any problems occurring with the device. The Unit reviewed work orders and data loggers to determine if a violation occurred. Additional changes to define violation, specifically clarify reportable and non-reportable activity and to define valid and substantiated proof or evidence of a reportable activity are contained in these rules. The Department has communicated extensively with manufacturers and installers to clarify information that should be reported. The rules incorporate by reference the 2013 NHTSA Model Specifications for BAIIDs, which define circumvention as: "An attempt to bypass the correct operation of a BAIID, whether by use of an altered breath sample, by starting the vehicle by any means without first providing a breath sample." This definition refers to use of an altered breath sample (having another person blow into the device) or starting the vehicle by another means without providing a breath sample. This definition does not include missing a rolling retest, which occurs after the car starts. Reporting manufacturers and installers have submitted missed rolling retests as a violation. These rule changes specify that beginning April 1, 2015, if a participant has a set of four missed rolling retests during the participant's ignition interlock period, the Department will extend the interlock period for six months. The Department feels this is a fair standard to both participants and to interlock providers. A.R.S. § 28-1461(B) requires an installer to provide information to the Department in a form prescribed by the Department on tampering or circumvention, failure to provide proof of compliance of the CIID, and breath alcohol violations. The rules implement this statute by having manufacturers and installers submit data. In other states, the ignition interlock manufacturers and installers also submit data to the appropriate state agency. The Department has not asked ignition interlock manufacturers and installers to take the place of administrative law judges.

	24. continued The manufacturers and installers are reporting to the Department as required by statute. The Department has given manufacturers and installers guidance on information that should be reported as well as information that should not be reported. The rules add provisions that allow the Department to cancel the certification of a manufacturer or an installer for one year due to improper reporting. The provider fees are set by contract with the participants. The Department of Transportation is a state agency that is not part of the criminal justice system. The courts are the entity in the criminal justice system that is responsible for sentencing and convicting participants for violations of law, not the Department of Transportation. Ignition interlock manufacturers and installers do not sentence participants. The Department oversees and certifies ignition interlock manufacturers and installers, and administers the ignition interlock program. The Department does not believe any additional changes are needed.
25. Rule changes allowing providers to charge for violations, but not report them to the correct agency, and removal of civil penalties for manufacturers who benefit from poor reporting places the citizens at risk and allows private companies to benefit. (Michael Roth)	25. The Department has defined reporting criteria, which includes activities defined as a violation as prescribed in R17-5-601. These activities are required to be present on the data logger and should not be altered or changed. Review and any necessary actions are taken by the Department pursuant to A.R.S. § 28-1461.
26. The commenter recommends that ADOT gather data about reporting violations and the providers that have not provided data loggers and have reported improperly to determine if any manufacturers can comply with the state's program. If not, the program should be redesigned. Providers capable of meeting the reporting requirements should remain certified providers and those that cannot meet the requirements should be decertified until they correctly report violations. (Michael Roth)	26. The Department has defined reporting criteria, which includes activities defined as a violation in R17-5-601. Any activities that occur that are violations must be present on the data logger as they occur and should not be altered or changed. Review of violations submitted and any necessary actions are taken by the Department pursuant to A.R.S. § 28-1461. The rules include clear provisions on improper reporting and reportable activity and allow the Department to cancel certification of a reporting installer or a reporting manufacturer who does not comply. The Department believes all reporting manufacturers and installers who wish to continue to serve customers in Arizona should familiarize themselves with the requirements and follow the requirements, or have their certification cancelled. The Department removed the civil penalty provisions in response to major concerns from manufacturers and installers about the amount of potential penalties for improper reporting and concern that they would be imposed unfairly. Instead, the Department may issue a written notice to an authorized installer or a manufacturer about improper reporting by a reporting manufacturer or a reporting installer. Failure of a reporting manufacturer or an installer to comply with the notice within ten business days allows the Department to cancel the authorized installer's or the manufacturer's certification. The rules do not impose any fees on participants. Ignition interlock fees are imposed by the providers by contract with the participant. The Department believes participants and citizens will benefit from the reporting rule changes.
27. The commenter proposes allowing a participant three missed rolling retests before action is taken by ADOT. This would decrease the requests for hearings and protect public safety. ADOT should structure a program that keeps the roadways safe rather than conform the program to installers that improperly report data. (Barry Saunders)	27. The Department believes the four missed rolling retests are a fair standard and each set of four missed rolling retests will result in a six-month extension of the offender's interlock requirement under this proposed rule. An extension will occur when the fourth refusal or failure to comply with the rolling retest occurs. This proposed rule does require a participant to follow a standard, will ensure public safety, and reduce the incidence of a participant, who has a consistent history of compliance with interlock requirements, from incurring an extension of the ignition interlock requirement due to legitimate reasons for missing a requested rolling retest.

28. The definition of improper reporting in R17-5-601 prohibits a manufacturer from reporting any incident after a participant turns off the vehicle. R17-5-603(F)(7) seems to require the installer to have the ignition interlock device report the failure to submit to a rolling retest. A participant can avoid recording the incident by completing a trip and turning off the device without recording an incident. The rules should clarify that the rolling retest will not be defeated by turning off the vehicle to avoid a rolling retest. Concerns were also expressed that the missed rolling retest definition allows a person to continue to drink and drive, and not be punished until after accumulating four missed rolling retests. The rule changes to the missed rolling definition weaken Arizona's ignition interlock program and participants will evade the program. (Barry Saunders, Justin McCord, James Lewis)	28. A participant cannot avoid the missed rolling retest incident by turning off the vehicle. The incident should automatically be recorded as a violation as prescribed in R17-5-601 and R17-5-610(H) if no successful test is performed within six minutes or before the vehicle is turned off. In response to your comment, the Department clarified the rule language in R17-5-610(G) as follows: "A participant shall not avoid compliance with the rolling retest requirement by turning off a motor vehicle's ignition". A missed rolling retest is reportable activity for a participant's noncompliance under R17-5-610(F). In addition, in R17-5-704(A)(7)(k), the Department has added this clarifying language: "and that a participant cannot avoid compliance with the rolling retest requirement by turning off a motor vehicle's ignition; and" For each six-minute period, if a participant does not pass a rolling retest before turning off the vehicle, the Department will count one missed rolling retest. If the participant receives a set of four missed rolling retests during the ignition interlock period, the participant's ignition interlock period is extended for 6 months. The Department believes this is a more equitable standard for participants, to provide for an extension after missing 4 rolling retests, rather than to extend their interlock period for each missed rolling retest. Driving and traffic conditions may not always allow a participant to take a rolling retest. If a participant has any other violations while the person drives with an ignition interlock, such as tampering, circumvention, and blood alcohol violations, the participant's ignition interlock period is extended.
29. If the intent of the rule is to record events for 45 minutes after the request for a rolling retest if the ignition is turned off, this creates other issues, including running down the car battery and manufacturers will need to make technical changes, if possible with each device, to record the missed rolling retest. This may lead to ADOT reinstating a participant's driver license to a person who drinks and drives. (James Lewis, Barry Saunders)	29. Due to comments received, the Department has lowered the time period for passing a rolling retest to 6 minutes (see chronology in item 10). A missed rolling retest should automatically be recorded as a violation as prescribed in R17-5-601 if the participant does not pass a rolling retest before turning off the vehicle without taking the test. The Department does not require that the ignition interlock device stay on for a set period to record events after the vehicle is turned off, but the participant must pass a rolling retest before turning the vehicle off. The Department has the authority to impose proper sanctions for this type of violation after the participant has refused to perform a rolling retest under the proposed rules that will result in a six-month extension of the participant's ignition interlock requirement. This violation does not require the Department to impose a withdrawal of the participants' driving privileges.
30. Manufacturers and authorized reporting installers may not report an incident (definition of improper reporting in R17-5-601) that occurs when a participant who is at least 21 has an alcohol concentration below 0.08. One commenter feels the state should be notified when there are consistent readings at or below a 0.08 breath alcohol concentration and have the state decide if they should take action. Another commenter stated that a participant over 21 with a blood alcohol level less than 0.08 would not be violating the rules. (Justin McCord, James Lewis)	30. A.R.S. § 28-1381(A)(2) provides that it is unlawful for a person to drive or be in physical control of a vehicle in this state if the person has an alcohol concentration of 0.08 or more within two hours of driving or being in actual physical control of the vehicle and the alcohol concentration results from consumption either before or while driving or being in actual physical control of the vehicle. The rules are consistent with this statute.
31. A missed rolling retest is non-reportable activity unless or until a missed rolling retest violation for non-compliance is adopted as part of the pending ignition interlock rules. The rules need to specify that a skipped rolling retest does not follow a failed test while the engine was on, or that all the tests during a run cycle were skipped. (R17-5-601) (Justin McCord)	31. The rules define missed rolling retest in R17-5-601 to mean that a participant refused or failed to provide a valid and substantiated breath sample in response to a requested rolling retest within the time period provided in R17-5-610(H). This was modified in response to industry concerns about higher time periods to require a participant to pass a rolling retest within six minutes. In response to your comment, the Department clarified the rule language in R17-5-610(G) as follows: "A participant shall not avoid compliance with the rolling retest requirement by turning off a motor vehicle's ignition". A missed rolling retest is reportable activity for a participant's noncompliance under R17-5-610(F). In addition, in R17-5-704(A)(7)(k), the Department has added this clarifying language: "and that a participant shall not avoid compliance with the rolling retest requirement by turning off a motor vehicle's ignition; and"

32. The rules define violation in R17-5-601 as failing to provide proof of compliance or inspection of a certified ignition interlock device as required by A.R.S. § 28-1461(E)(4). The commenter states that the penalty or extension period needs to be defined for this violation because it could force a participant to return a device if they take it because the order remains in effect until the participant brings the device into compliance. (Justin McCord)	32. Pursuant to A.R.S. § 28-1463, the Department is required to suspend the participant's driving privileges if proof of compliance is not received at least once every 90 days. This suspension is to remain in effect until proof of compliance is received. A.R.S. § 28-1461 does not provide authority to extend an ignition interlock period for failure of a participant to return an ignition interlock device to an ignition interlock provider. Failure of a participant to return an ignition interlock device is a civil matter and is not covered in statute.
33. The rules require a manufacturer for any new ignition interlock device installations or device replacements of a device to install a CIID that meets the 2013 NHTSA Model Specifications. The commenter suggests that ADOT needs to have a system to determine the units in the field that meet this standard after this date.(Justin McCord)	33. The rules require that each certified manufacturer report to ADOT the name and model number of each device to be used in Arizona under R17-5-604(B(5). Beginning April 1, 2015, for any new ignition interlock device installation or a replacement of a device, a manufacturer or its authorized installer shall install a certified ignition interlock device that meets the 2013 NHTSA Model Specifications. Devices installed before April 1, 2015 that are functioning properly and do not require replacement can continue to be used by a participant for the duration of the participant's ignition interlock period. ADOT does not see a need for additional enforcement. ADOT will monitor the installers to determine compliance.
34. The rules require devices installed before April 1, 2015 that met the 1992 Model Specifications and are working properly, to continue in use for the rest of a participant's ignition interlock period. A manufacturer must, on or before April 1, 2015, submit a new application to certify any new CIID, or recertify an existing device that a manufacturer wants to continue installing. A device should be calibrated at the point of service during the removal of a non-certified or no longer certified device to maintain chain of custody. Mailing a unit out-of-state for calibration breaks the chain of custody because the provider gives control to a third party. (Justin McCord)	34. The rules provide in R17-5-604(E) that new installations of ignition interlock devices or replacements must meet the 2013 NHTSA Model Specifications, which require calibration. The rule effective date is April 1, 2015. If a device that no longer meets these standards is distributed to another state, the state agency that oversees ignition interlock devices in that state should require these devices to be calibrated. No additional rule changes are necessary.
35. The rules do not appear to require the horn on a participant's vehicle to honk or have flashing lights if a person fails to take a rolling retest. (Justin McCord)	35. The rules require in R17-5-603(F)(6)(a) that an ignition interlock device must emit a warning light, tone, or both to alert a participant to take a rolling retest. The Department does not recommend any further changes, such as having a vehicle's horn honk or having a vehicles' lights flash if a person fails to take a rolling retest, because this could be distracting to other drivers and pose a public safety risk.
36. In regard to R17-5-704(A)(7)(k), a participant will understand that the person has four free passes before ADOT is concerned about the person's behavior. The commenter states that these events should be recorded to correct unacceptable behavior and show acceptable, changed behavior before the program ends. Some participants will abuse and evade the program before changing their behavior. The provider must train the participant on the program, including the rolling retest. When they do, the participant will understand that he has four free passes to do as he pleases before the state cares about his behavior. The rules do not allow any reporting to the state that indicates that the participant is not acting as he should. This raises liability concerns for the state and providers. (James Lewis)	36. When a participant does not pass one rolling retest within six minutes, the participant has one missed rolling retest that counts toward an extension. An extension of the CIID will occur on the fourth refusal or failure to pass a requested rolling retest. A number of states, such as New Mexico, California, Washington, Illinois, and Minnesota have adopted administrative rules or statutes that provide for multiple refusals or failure to pass a rolling retest before any sanction occurs. A majority of Arizona-certified ignition interlock manufacturers also have ignition interlock devices in use in the above states. The proposed rule is very similar to what has been established in many other states in regard to missed rolling retests.
37. The devices will count events and violations based on events that accumulate in the device log for a given service interval. Each time a device is serviced, these events are downloaded and cleared. In other words, if there were three missed running retests in the log, and after a monitor appointment (calibration and accuracy check), the log was downloaded and cleared, as is the case when the fourth missed running retest occurred, the device would not know to lockout. (James Lewis)	37. A manufacturer may still determine when the device locks-out. The rules and statutes do not require a lock-out after missing a rolling retest. In future system changes to reporting standards, reporting entities will be able to report individual occurrences of missed running retest, and it will be ADOT's responsibility to accumulate and tally occurrences and take action.
38. The commenter stated that improper reporting in R17-5-601 of an incident that occurs after the participant's vehicle is turned off could occur due to a power disconnect, which may mean possible tampering, an emergency override code was entered, or an attempt was made to start the vehicle without a test. He suggested the language in R17-5-601 under improper reporting should be changed to "An incident that occurs because the participant's vehicle is turned off."(James Lewis)	38. Language has been added to R17-5-610(G) and R17-5-704(A)(7)(k) in compliance with A.R.S. § 28-1461(H), to clarify that a participant shall not avoid compliance with the rolling retest requirement by turning off a vehicle ignition. Tampering as defined in A.R.S. § 28-1301(9) is a reportable activity under R17-5-610. No rule change is necessary.

39. Per R17-5-601, improper reporting is reporting the same violation by a participant on multiple occasions. If a participant violates multiple times, isn't that different information that the state would want to know? This gives the provider a better picture of the participant's behavior and compliance. Providers should report all legitimate violations.(James Lewis)	39. The Department agrees that the language in R17-5-601 relating to improper reporting and reporting the same violation on multiple occasions should be clarified as follows: "Electronic reporting by a manufacturer or its authorized reporting installer to the Department of data that is an exact duplicate of a single violation that occurs on a particular day and time and is reported multiple times;"
40. When are cameras proposed to be required? (Harlan Williams)	40. The rules do not contain a requirement for manufacturers to have ignition interlock devices with cameras. Current legislation does not require devices to have cameras. The rule language in R17-5-610(D) allows submission of photographs as evidence of a reportable activity.
41. Will there be a grandfather clause for certified ignition interlock devices? (Harlan Williams)	41. Effective April 1, 2015, for any new ignition interlock device installation or a replacement of a device, a manufacturer or its authorized installer shall install a certified ignition interlock device that meets the 2013 NHTSA Model Specifications. Certified devices installed before April 1, 2015 that are functioning properly and do not require replacement can continue to be used by a participant for the duration of the participant's ignition interlock device period.
42. Is an ignition interlock device manufacturer required to have an office in Arizona? (Michelle Oge)	42. In R17-5-601, a new definition, "principal place of business" was added that means "the administrative headquarters of a manufacturer or a manufacturer's authorized installer that is located in Arizona and is not used as a residence." A manufacturer is required in R17-5-604(B)(2) to state the manufacturer's principal place of business in this state when applying to ADOT to certify an ignition interlock device. The purpose of this requirement is to allow ADOT to do inspections and to provide access to participant records.
43. Will a test report be required for an ignition interlock device with a camera to confirm that it meets the same standards as the ignition interlock device? (Harlan Williams)	43. No, a separate test report from a laboratory will not be required for an ignition interlock device with a separate camera. ADOT will test those ignition interlock devices with cameras that are separate from the device.
44. The commenter recommends that in R17-5-601 in the definition of improper reporting that the provision regarding an incident that occurs when a participant's vehicle has high or low voltage should be revised to state: "An incident that occurs because a participant's vehicle has high or low voltage." Keep in mind that potentially, unusual voltage levels could be a symptom of tampering, such as a secondary battery. (James Lewis)	44. While high or low voltage alone does not constitute tampering, high or low voltage can be reported in conjunction with additional events, such as supporting evidence as proof of tampering as defined in A.R.S. § 28-1301(9). The Department does not believe a rule change is necessary.
45. The commenter suggested that the agency standardize the rolling retest request duration at six minutes to allow more opportunity to hear the request or return to the vehicle. (James Lewis)	45. The rules in R17-5-603(F)(6)(b) establish a period of six minutes to take the rolling retest safely in a variety of conditions and situations. Six minutes is in the middle of the prescribed range of 5 to 7 minutes in the testing portion of the 2013 NHTSA Model Specifications for taking a rolling retest. These specifications do not require states to establish any particular time period.
46. The commenter stated that the state could adopt a minimum threshold on the number of missed rolling retests that can occur before a violation is generated. The rules should not allow a participant to ignore an ignition interlock device for 45 minutes on 4 separate occasions before anyone cares. (James Lewis)	46. The Department has deleted the 45-minute period within which a participant must pass a rolling retest and inserted six minutes (see chronology in item 10). Each missed rolling retest is counted. The Department has adopted a minimum threshold of 4 missed rolling retests. After a participant has a set of four missed rolling retests during the participant's ignition interlock period, the ignition interlock period will be extended for six months. Turning off a vehicle's ignition after six minutes without passing a rolling retest counts as one missed rolling retest that may lead to an extension of six months.
47. Most ignition interlock devices have variable parameters that allow the length of the rolling retest request to be configurable, but it is possible that not all devices will be capable of configuring to a cumulative period of 45 minutes. It is likely that some firmware modification will be required, or some devices will need to be replaced. (James Lewis)	47. The Department has removed the originally proposed 45-minute period in which a participant was required to pass a rolling retest. Since there is no uniformity among states regarding the rolling retest, manufacturers must frequently make software and firmware modifications due to state statute and rule changes. It may also be necessary for a manufacturer to produce a new device to meet the 2013 NHTSA Model Specifications.
48. Under the proposed rules in R17-5-601 will a participant initiate and conduct service/data downloads independently based on a remote installer's proper receipt of data? Will mobile service centers or kiosks have an on-site installer participating in the data download? The commenter is concerned about good quality control for the device and data downloads. (Michelle Spirk)	48. As prescribed in R17-5-707, the Department has established specific conditions that are required to be followed at all established service centers. Information is electronically transmitted from kiosks or mobile service centers to the installer. A service center must meet the requirements necessary to maintain installer certification.

49. Regarding R17-5-603(A), the commenter recommends use of a dry gas reference sample to determine device accuracy rather than a reference sample device. The commenter noted that problems exist with wet bath simulators, but the devices can provide good accuracy checks in proper hands and conditions. (Michelle Spirk)	49. The Department has incorporated by reference the 2013 NHTSA Model Specifications that define a simulator to include either a wet bath or a dry gas simulator. The Department appreciates the comment, but does not feel it is necessary to change the type of simulator.
50. The commenter supports the use of a breath sample that is essentially alveolar (R17-5-603(B)). (Michelle Spirk)	50. The proposed rules do not change this provision.
51. In reference to R17-5-604(C) and (E), the commenter states that a manufacturer could wait until April 1, 2015 to submit new device application materials and is concerned that the Department of Public Safety (DPS) may not be able to conduct initial technical review and approvals in a timely fashion to ensure that the devices are in the appropriate approval status. Subsection (E) that allows the Department to adjust approval time-frames to obtain external agency approvals for device certification seems like an afterthought. The commenter suggests that the device submission dates should be modified to reasonably accommodate implementation of the new NHTSA Model Specifications by April 1, 2015. (Michelle Spirk)	51. The Department thanks the commenter for the input; however, these specifications are a national effort in order for manufacturers to be in compliance throughout the U.S. Arizona has communicated the deadline to manufacturers, which allows ample time for compliance with these specifications. The language in R17-5-604(D) was modified to require a manufacturer to submit an application and required information on or before April 1, 2015. R17-5-604(E) was modified to provide that beginning April 1, 2015, new device installations or device replacements must meet the 2013 NHTSA Model Specifications. R17-5-605(F) allows for suspension of the overall time-frame of 40 days under A.R.S. § 41-1074 for the Department to obtain confirmation or approval by the Department of Public Safety of the laboratory report under R17-5-606(A)(3). The Department does not believe that location of a provision toward the end of a rule is an after-thought. The Department has given manufacturers substantial notice of the April 1, 2015 rule effective date. The Department will encourage manufacturers to submit new applications, laboratory tests, and required information as early as possible before April 1, 2015.
52. R17-5-603(F)(4) requires a device to use the current version of the manufacturer's software and firmware. Not until later in Subsections (G)(1) and (G)(3) does the rule indicate that this is only permissible if this does not modify the design or the device's operation concept. This is a critical moment and belongs up-front at the first mention of allowable software revisions. (Michelle Spirk)	52. R17-5-603(F)(4) provides that the ignition interlock device software and firmware shall not allow modification of device settings by a service center or a service representative unless the Department approves the modification under Subsection (G). Subsection (G) states that the device's design or operational concept of a device model shall not be modified after the device is certified and mentions the allowable modification exceptions. The language in this rule is logically organized and is clear, concise, and understandable. The Department does not recommend any change.
53. The commenter asks what the intent is to report activity for noncompliance of attempting to operate a vehicle with an alcohol concentration in excess of the startup set point for a person under 21. Is the intent to clarify the purpose of the CIID was served when this occurs and no excessive penalties will be imposed for failed attempts? The CIID should require subsequent tests on any failed test or assume the next test will be a failed test when they don't provide it. (Justin McCord)	53. A.R.S. § 28-1461(B)(3) requires an installer to electronically report to the Department any attempt by a person under 21 operating a vehicle with a certified ignition interlock device if the person has any spirituous liquor in the person's body. The requirement in R17-5-610 to pass a rolling retest within 6 minutes applies to all participants, including those under 21. If the participant turns off the vehicle before 6 minutes and does not pass a rolling retest, the Department will count this as 1 missed rolling retest. The device continuously requests a rolling retest at random intervals for all participants regardless of the result of the previous rolling retest. This rule also requires the interlock requirement to be extended for 6 months for any person, including a person under 21, who has a set for four missed rolling retests during the ignition interlock period.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rules or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to questions (a) through (c):

There are no other matters prescribed by statute applicable to ADOT or to this rulemaking.

a. Whether the rules require a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The Department certifies ignition interlock installers to install ignition interlock devices. An ignition interlock manufacturer must also obtain Department certification of the manufacturer's ignition interlock device to allow installation of the device. An ignition interlock service center is included in the definition of installer as defined in A.R.S. § 28-1301, is considered an installer and meets the requirements necessary to maintain installer certification prior to its use as a business location. This change in the rules was made to allow for more specific enforcement adjustments. These certifications are agency authorizations for a manufacturer and an installer to conduct activities in a class that are substantially similar in nature and that are granted to a qualified applicant to conduct identified activities if the applicant meets the applicable requirements of the general permit under A.R.S. § 41-1001.

b. Whether a federal law is applicable to the subject of the rules, whether the rules are more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:
No federal laws are applicable to these rules.

c. Whether a person submitted an analysis to the agency that compares the rules' impact of the competitiveness of business in this state to the impact on business in other states:
The Department did not receive any analyses that compared the rules' impact on competitiveness of business in this state with the impact on business in other states.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:
R17-5-604(C)(3)(a) incorporates by reference the NHTSA Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs), published at 78 FR 26862 to 26867, May 8, 2013.

14. Whether the rules were previously made, amended, or repealed as emergency rules. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:
Not applicable

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION COMMERCIAL PROGRAMS

ARTICLE 6. IGNITION INTERLOCK DEVICE MANUFACTURERS

Section
R17-5-601. Definitions
R17-5-602. Ignition Interlock Device Manufacturer Certification; Expiration; Cancellation of Certification; Notice
R17-5-603. Device Requirements, Technical Specifications, and Standards for Setup and Calibration
R17-5-604. Ignition Interlock Device Certification; Application Requirements
R17-5-605. Application Processing; Time-frames; Exception
R17-5-606. Application Completeness; Denial of Ignition Interlock Device Certification; Hearing
R17-5-607. Cancellation of Certification; Hearing
R17-5-608. Modification of a Certified Ignition Interlock Device Model
R17-5-609. Manufacturer Referral to ~~Division-certified~~ Authorized Installers; Manufacturer Oversight of its Authorized Installers
R17-5-610. Installation Verification; Accuracy Check; Noncompliance and Removal Reporting; Report Review
R17-5-611. Emergency Assistance by Manufacturers and Authorized Installers; Continuity of Service to Participants
R17-5-612. Records Retention; Submission of Copies and Quarterly Reports~~; Periodic Inspections~~
R17-5-613. ~~Ignition Interlock Investigator~~ Inspections

ARTICLE 7. IGNITION INTERLOCK DEVICE INSTALLERS

Section
R17-5-701. Definitions
R17-5-702. Ignition Interlock Device Installer Certification; Application Requirements; Recertification
R17-5-703. Ignition Interlock Device Installer Bond Requirements; Recertification
R17-5-704. ~~Division-certified~~ Authorized Installer Responsibilities
R17-5-705. Installer-certified Service Representatives
R17-5-706. Accuracy and Compliance Check; Requirements
R17-5-707. ~~Certification and~~ Inspection of Service Centers; Application
R17-5-708. ~~Cease and Desist;~~ Notice; Denial or Cancellation of Certification; Appeal; Hearing

ARTICLE 6. IGNITION INTERLOCK DEVICE MANUFACTURERS

R17-5-601. Definitions
In addition to the definitions provided under A.R.S. §§ 28-101 and 28-1301, in this Article ~~and A.A.C. R17-4-408~~, unless the context otherwise requires, the following terms apply:

"Alcohol" means ethyl alcohol, also called ethanol.

"Alcohol concentration" means the weight amount of alcohol contained in a unit volume of breath or air, measured in grams of ethanol/210 liters of breath or air and expressed as grams/210 liters.

"Alveolar breath sample" means the last portion of a prolonged, uninterrupted exhalation from which breath alcohol concentrations can be determined.

"Anticircumvention feature" means any feature or circuitry incorporated into the ignition interlock device that is designed to prevent human activity that would cause the device not to operate as intended.

"Authorized installer" means a person or entity appointed by a manufacturer, and certified by the ~~Division~~ Department, to install and service a certified ignition interlock device model provided by the manufacturer.

"Breath alcohol test" means analysis of a sample of the ~~person's~~ participant's expired alveolar breath to determine alcohol concentration.

"Business day" means a day other than a Saturday, Sunday, or state holiday.

"Calibration" means the testing, adjustment, or systematic standardization of an ignition interlock device to determine and verify its accuracy.

"Cancellation" means the withdrawal of a certification granted by the ~~Division~~ Department under this Article, which prohibits a previously certified ignition interlock device manufacturer, its authorized installer, or the authorized installer's service center from offering, installing, or servicing an ignition interlock device under Arizona law.

"Certification" means a status granted by the ~~Division~~ Department under this Article, which permits a certified ignition interlock device manufacturer, an authorized installer, or an authorized installer's service center to offer, install, or service an ignition interlock device under Arizona law.

"Corrective action" means an action specified in or reasonably implied from Title 28, Chapter 4, Arizona Revised Statutes, that the Department takes in relation to a participant's driving privilege and the usage or discontinuation of usage of a certified ignition interlock device, or an action that the Department takes in relation to the performance of the duties of a manufacturer or an installer in Articles 6 or 7 of this Chapter to deny or cancel manufacturer or installer certification.

"Customer number" means the system-generated, or other distinguishing number, assigned by the ~~Division~~ Department to each person conducting business with the ~~Division~~ Department. The customer number of a private individual is generally the person's driver license or non-operating identification license number.

"Data storage system" means a computerized recording of all events monitored by an installed ignition interlock device, which may be reproduced in the form of specific reports.

~~"Director" means the Assistant Director for the Motor Vehicle Division of the Arizona Department of Transportation or the Assistant Director's designee.~~

~~"Division" means the Arizona Department of Transportation's Motor Vehicle Division.~~

"Emergency bypass" means an event that permits a vehicle equipped with an ignition interlock device to be started without requiring successful completion of a required breath alcohol test.

"Emergency situation" means a circumstance ~~where~~ in which the participant declares to ~~a Division-certified~~ the installer that the vehicle needs to be moved ~~as a condition of~~ to comply with the law or the participant has a valid and urgent need to operate the vehicle.

"Established place of business" means a business location that is:

Approved by the Department;

Located in Arizona;

Not used as a residence; and

Where a manufacturer's authorized installer performs authorized activities.

"False sample" means any sample other than the unaltered, undiluted, or unfiltered alveolar breath sample coming from the participant.

"Filtered breath sample" means any mechanism by which there is an attempt to remove alcohol from the human breath sample.

"Fixed-site service center" means a permanent location operated by an installer for conducting business and providing services related to a certified ignition interlock device.

"Free restart" means a function of a certified ignition interlock device that will allow a participant to restart the vehicle, under the conditions provided in R17-5-603, without ~~having to complete~~ completing another breath alcohol test.

~~"Ignition interlock investigator" means a Division representative authorized under R17-5-613 to inspect and monitor~~

~~ignition interlock device manufacturers, installers, and service centers for continuous compliance with Articles 6 and 7 of this Chapter and A.R.S. Title 28, Chapter 4, Article 5.~~

"Ignition interlock period" means the period in which a participant is required to use a certified ignition interlock device that is installed in a vehicle.

~~"Illegal start" means the starting of a vehicle equipped with an ignition interlock device without successfully completing the required breath alcohol test.~~

"Improper reporting" means any of the following:

Failure of a manufacturer or its authorized reporting installer to report any violations to the Department within 24 hours as required in R17-5-610(D)(2), or failure to send participant ignition interlock reporting records, including records relating to a violation, to the Department as required in R17-5-612(B)(1);

Failure of a manufacturer or its authorized reporting installer to provide copies of participant certified ignition interlock device records to the Department within 10 days after the Department's request;

Failure of a manufacturer or its authorized reporting installer to provide quarterly reports as required in accordance with the schedule prescribed in R17-5-612(B);

Failure of a manufacturer or its authorized reporting installer to screen and remove invalid or unsubstantiated reporting data from a participant's ignition interlock reporting records prior to submitting these reporting records to the Department;

Failure of a manufacturer or its authorized reporting installer to electronically send each Certified Ignition Interlock Summarized Reporting Record to the Department within 24 hours, after performing an accuracy and compliance check, that results in the Department mailing a driver license suspension to a driver;

Electronic reporting by a manufacturer or its authorized reporting installer to the Department of data that is an exact duplicate of a single violation that occurs on a particular day and time and is reported multiple times;

An incident that occurs when a participant's vehicle has high or low voltage;

An incident that occurs when a participant has a free restart test to start the participant's vehicle;

An incident that occurs in which an installer downloads data from the device during an accuracy check and tampers with a certified ignition interlock device; or

An incident that occurs after the participant's vehicle is turned off.

"Independent laboratory" means a testing facility, not owned or operated by a manufacturer, that can test an ignition interlock device according to ~~Sections 1 and 2 of~~ the ~~National Highway Traffic Safety Administration~~ ~~(NHTSA)~~ Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs), ~~57 FR 11772 to 11787, April 7, 1992.~~ Appendix A-Quality Assurance Plan Template, and Appendix B-Sample Format For Downloaded Data From The Interlock Data Logger, NHTSA, published at 78 FR 26862 to 26867, May 8, 2013.

~~"Installer" means a manufacturer, a manufacturer's authorized representative, or a person or entity responsible for the day-to-day operations of a service center, who is certified by the Division to install a certified ignition interlock device and to provide certified ignition interlock device related services to the public.~~

"Installer-certified service representative" means any individual who has successfully completed all requirements under R17-5-705, and has received certification from an installer to install, inspect, download, calibrate, repair, monitor, maintain, service, or remove a specific certified ignition interlock device.

~~"Interlock" means the mechanism which prevents a motor vehicle from starting when the breath alcohol concentration of a participant meets or exceeds a preset value.~~

"Lock-out condition" means the operational status of a certified ignition interlock device, which after recording any violation of A.R.S. Title 28, Chapter 4, Article 5, immobilizes a participant's vehicle by disallowing further operation of the device. The lock-out feature is built into ~~an~~ a certified ignition interlock device through manufacturer software or firmware, and once activated, the device must be re-set by the manufacturer's authorized installer.

~~"Manufacturer" means a person or entity that produces a certified ignition interlock device and is certified by the Division to offer the device for installation under Arizona law.~~

"Manufacturer's authorized representative" means an individual or entity designated by a manufacturer to represent or act on behalf of the manufacturer of a certified ignition interlock device.

"Material modification" means a change to a certified ignition interlock device that affects the functionality of the device.

"Missed rolling retest" means the participant refused or failed to provide a valid and substantiated breath sample in response to a requested rolling retest within the time period described in R17-5-610(H).

"Mobile service center" means the portable operation of an installer, whether contained within a vehicle or temporar-

ily erected ~~on location,~~ at a publicly accessible commercial location, including a kiosk, which includes all personnel and equipment necessary for an installer to conduct certified ignition interlock device related business and services, separately and simultaneously, with its parent fixed-site service center.

~~"Negative result" means a test result indicating that the alcohol concentration is less than the startup set point value.~~

"NHTSA" means the United States Department of Transportation's National Highway Traffic Safety Administration.

"NHTSA specifications" means the specifications for breath alcohol ignition interlock devices ~~published at 57 FR 11772 to 11787, April 7, 1992.~~ published at 78 FR 26862 to 26867, May 8, 2013.

"Participant" means a person who is ordered by an Arizona court or the ~~Division~~ Department to equip each motor vehicle operated by the person with a functioning certified ignition interlock device and who becomes ~~an authorized installer's~~ a customer of an installer for installation and servicing of the certified ignition interlock device.

"Positive result" means a test result indicating that the alcohol concentration meets or exceeds the startup set point value.

"Principal place of business" means the administrative headquarters of a manufacturer or a manufacturer's authorized installer that is located in Arizona and is not used as a residence.

"Purge" means any mechanism ~~which~~ that cleanses or removes a previous breath or reference sample from the device and specifically removes alcohol.

"Reference sample device" means a device containing a sample of known alcohol concentration.

"Retest set point" has the same meaning as startup set point.

"Rolling retest" means an additional breath alcohol test required of the participant at random intervals~~.~~ after the start of the vehicle ~~This test~~ that is in addition to the initial test required to start the vehicle.

"Service center" means a certified ignition interlock device service center operated by an installer and considered an installer under this Section, who meets and maintains all Department certification and inspection requirements ~~of the Division~~ under R17-5-707, whether operated on a fixed-site or mobile.

"Startup set point" means the alcohol concentration value, established by the ~~Division~~ Department under R17-5-603(A), which is determined by the ~~Division~~ Department to be the point at which, or above, ~~an~~ a certified ignition interlock device shall disable the ignition of a motor vehicle.

"Violation" ~~means~~ includes, but is not limited to any of ~~several events including, but not limited to, high alcohol concentrations, illegal starts, and failures to perform rolling retests.~~ the following reportable activities performed by a participant against whom the Department shall take corrective action against the participant's driving privilege:

Tampering with the certified ignition interlock device as defined in A.R.S. § 28-1301;

Failing to provide proof of compliance or inspection of the certified ignition interlock device under A.R.S. § 28-1461(E)(4);

Attempting to operate the vehicle with an alcohol concentration of 0.08 or more as prescribed in A.R.S. § 28-1461(E) if the participant is at least 21 years of age;

Attempting to operate the vehicle with an alcohol concentration value in excess of the startup set point if the participant is under 21 years of age;

Refusing or failing to provide any set of four valid and substantiated breath samples in response to a requested rolling retest during a participant's ignition interlock period; or

Disconnecting or removing a certified ignition interlock device, except:

On receipt of Department authorization to remove the device;

On repair of the vehicle, if the participant provided to the manufacturer, installer, or service center advanced notice of the repair and the anticipated completion date; or

On replacement of one vehicle with another vehicle if replacement of the device is accomplished within 72 hours of device removal.

"Violation reset" means the unplanned servicing of a certified ignition interlock device and the downloading of information from its data storage system by a service center when required as a result of an over-accumulation of violations.

R17-5-602. Ignition Interlock Device Manufacturer Certification; Expiration; Cancellation of Certification; Notice

A. An ignition interlock device manufacturer shall obtain certification by the ~~Division~~ Department under this Article before offering an ignition interlock device model for installation under Arizona law.

B. After receiving ~~Division~~ Department certification for an ignition interlock device model and meeting all the requirements under R17-5-604, the ignition interlock device manufacturer is effectively certified by the ~~Division~~ Department to offer its certified ignition interlock device model for installation under Arizona law.

C. An ignition interlock device manufacturer shall submit a new application to the ~~Division~~ Department under R17-5-604 for the certification of each new ignition interlock device model the manufacturer intends to offer for installation.

D. Manufacturer certification issued by the ~~Division~~ Department under this Article shall automatically expire if:
1. The manufacturer no longer provides at least one currently certified ignition interlock device model for installation under Arizona law; and
2. The manufacturer has no pending application on file with the ~~Division~~ Department for the certification of a device under R17-5-604.

E. If the Department determines that a reporting manufacturer fails to properly report ignition interlock information and data to the Department in the manner prescribed in these rules, the Department may immediately provide written notice to the authorized reporting manufacturer with the following information:
1. The name of the participant and the date of the improper reporting; and
2. The reporting manufacturer shall send the required record or report to the Department within ten business days, if applicable.

F. If the reporting manufacturer fails to remedy the issues identified in the notice within ten business days, the Department may cancel the manufacturer device certification.

G. If the Director cancels a manufacturer's device certification, the Director shall notify each participant with the manufacturer's certified ignition interlock device that the participant has 30 days to obtain another installer.

H. After the one-year cancellation period ends, a manufacturer may reapply to the Department for certification by completing a new application for the certification of a device and meeting all certification requirements under this Article.

~~E.~~I. ~~Once~~ If a manufacturer's certification expires~~,~~ as a result of subsections (D)(1) and (D)(2), the manufacturer may reapply for certification by submitting a new application to the ~~Division~~ Department for the certification of a device under R17-5-604.

R17-5-603. Device Requirements, Technical Specifications, and Standards for Setup and Calibration

A. ~~Accuracy standards.~~ The startup set point value for ~~an~~ a certified ignition interlock device shall be an alcohol concentration of ~~0.030 g/210~~ 0.020 g/210 liters of breath. The accuracy of a device shall be ~~0.030 g/210~~ 0.020 g/210 liters plus or minus 0.010 g/210 liters. The accuracy shall be determined by analysis of an external standard generated by a reference sample device.

B. ~~Alveolar breath sample.~~ A device shall have a demonstrable feature designed to assure that a breath sample measured is essentially alveolar.

C. ~~Specificity.~~ A test of alcohol-free samples shall not yield a positive result. Endogenously produced substances capable of being present in the breath shall not yield or significantly contribute to a positive result.

D. ~~Temperature.~~ ~~A device~~ All devices, including those with cameras, shall meet the requirements of subsection (A) when used at ambient temperatures of -20° Celsius to 83° Celsius.

E. ~~Anticircumvention standards.~~ A device shall be designed so that anticircumvention features will be difficult to bypass.
1. Anticircumvention provisions shall include, but are not limited to, prevention or preservation of any evidence of cheating by attempting to use a false or filtered breath sample or electronically bypassing the breath sampling requirements of a device.
2. A device shall use special seals or other methods that reveal attempts to bypass lawful device operation.

F. ~~Operational features.~~ A device shall:
1. ~~A device shall allow~~ Allow a free restart of a motor vehicle's ignition, within three minutes after the ignition is switched off, without requiring another breath alcohol test.
2. ~~A device shall automatically~~ Automatically purge alcohol before allowing analysis.
3. ~~A device shall have~~ Have a data storage system with the capacity to sufficiently record and maintain a record of the participant's daily driving activities that occur between each regularly scheduled accuracy and compliance check referenced under R17-5-610 and R17-5-706. ~~All daily driving activity records in the device's data storage system shall be maintained by the installer and the service center and made available to the Division upon request as provided under R17-5-612.~~ A manufacturer or its authorized installer shall download any digital images taken during a participant's accuracy and compliance check. A manufacturer or its authorized installer shall make these digital images available to the Department on request.
4. ~~A device shall use~~ Use the most current version of the manufacturer's software and firmware to ensure compliance with this Article and any other applicable rule or statute~~.~~, and ~~The~~ the manufacturer's software and firmware:
   a. Shall require device settings and operational features to include, but are not limited to, sample delivery requirements, startup and retest set points, free restart, rolling retest requirements, violation settings and lock-out conditions; and
   b. Shall not allow modification of the device settings or operational features by a service center or service representative unless the ~~Division~~ Department approves the modification under subsection (G).
5. ~~A device shall record~~ Record all emergency bypasses in its data storage system.
6. ~~A device shall require~~ Require a participant to perform a rolling retest within five to 15 minutes after the initial test required to start an engine~~.~~, and ~~The~~ the device shall continuously require additional rolling retests at random inter-

vals of up to ~~45~~ 30 minutes after each previously requested retest~~.~~ as follows:
a. A device shall emit a warning light, tone, or both, to alert a participant that a rolling retest is required.
b. A device shall allow a period of six minutes after the warning light, tone, or both, to allow a participant to take a rolling retest.
~~b.~~c. A device shall require a participant to perform a new test to restart an engine if it is inadvertently switched off during or after a rolling retest warning.
~~c.~~d. A device shall use the startup set point value as its retest set point value.
~~d.~~e. A device shall record, in its data storage system, the result of each rolling retest~~,~~ performed by a participant~~.~~ during the participant's ignition interlock period and any valid and substantiated missed rolling retests; and
~~e.~~f. A device shall immediately require another rolling retest each time a participant refuses to perform a requested rolling retest.
7. Until a participant successfully performs a rolling retest, or the engine is switched off, a device shall record in its data storage system, each subsequent refusal or failure of the participant to perform the requested rolling retest.
8. ~~Upon~~ On recording a violation of A.R.S. Title 28, Chapter 4, Article 5, ~~the device shall~~ emit a unique cue, either auditory, visual, or both, to warn a participant that the device will enter into a lock-out condition in 72 hours unless reset by the installer.
9. When a violation results in a lock-out condition, the device shall:
a. Immobilize the participant's vehicle;
b. Uniquely record the event in the data storage system; and
c. Require a violation reset by the installer.

G. ~~Modification.~~ No modification shall be made to the design or operational concept of a device model after the ~~Division~~ Department has certified the device for installation under Arizona law~~.~~, except that:
1. A software or firmware update required to maintain a device model is permissible if the update does not modify the design or operational concept of the device.
2. Replacement, substitution, or repair of a part required to maintain a device model is permissible if the part does not modify the design or operational concept of the device.
3. If a manufacturer determines that an existing ~~Division-certified~~ Department-certified ignition interlock device model requires a modification that may affect the operational concept of a device, the manufacturer shall immediately notify the ~~Division~~ Department.

R17-5-604. Ignition Interlock Device Certification; Application Requirements

A. A manufacturer shall offer for installation only an ignition interlock device that is certified by the ~~Division~~ Department under this Section.

B. For certification of an ignition interlock device model, a manufacturer shall submit to the ~~Division~~ Department a properly completed application form that provides:
1. The manufacturer's name;
2. The manufacturer's principal place of business ~~address~~ in this state, established places of business in this state, and ~~telephone number;~~ telephone numbers;
3. The manufacturer's status as a sole proprietorship, partnership, limited liability company, or corporation;
4. The name of the sole proprietor or of each partner, officer, director, manager, member, agent, or 20% or more stockholder;
5. The name and model number of the ignition interlock device and the name under which the ignition interlock device will be marketed; and
6. The following statements, signed by ~~an authorized representative of the manufacturer~~ the manufacturer's authorized representative and acknowledged by a notary public or ~~Division~~ Department agent:
a. A statement that all information provided on the application form, including all information provided on any attachment to the application form, is complete, true, and correct;
b. A statement that the manufacturer agrees to indemnify and hold harmless the state of Arizona and any department, division, agency, officer, employee, or agent of the state of Arizona from all liability for:
i. Damage to property or injury to people arising, directly or indirectly, out of any act or omission by the manufacturer or its authorized installer relating to the installation and operation of the ignition interlock device; and
ii. All court costs, expenses of litigation, and reasonable attorneys' fees;
c. A statement that the manufacturer agrees to comply with all requirements under this Article; and
d. A statement that the manufacturer agrees to immediately notify the ~~Division~~ Department of any change to the information provided on the application form.

C. A manufacturer shall submit the following additional items with the application form:
1. A document that provides a detailed description of the ignition interlock device and a photograph, drawing, or other graphic depiction of the device;
2. A document that contains the complete technical specifications for the accuracy, reliability, security, data collection,

recording, and tamper detection capabilities of the ignition interlock device;

3. An independent laboratory's report that:
   a. Presents supporting data to demonstrate that the ignition interlock device meets or exceeds the ~~test- results~~ test results required by ~~Sections 1 and 2 of the NHTSA specifications published at 57 FR 11772 to 11787, April 7, 1992.~~ the Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIIDs), Appendix A-Quality Assurance Plan Template, and Appendix B-Sample Format For Downloaded Data From The Interlock Data Logger, NHTSA, published at 78 FR 26862 to 26867, May 8, 2013. The NHTSA specifications are incorporated by reference and are on file with the ~~Division~~ Department and the NHTSA Office of Research ~~&~~ and Technology (NTS-131), 400 7th St. S.W., Washington, D.C. 20590. This incorporation by reference contains no future editions or amendments;
   b. Provides the independent laboratory's name, address, and telephone number; and
   c. Provides the name and model number of the ignition interlock device tested~~;~~.
4. A laboratory certification form, signed by an authorized representative of the independent laboratory that prepared the report required under subsection (C)(3) and acknowledged by a notary public or ~~Division~~ Department agent, that states:
   a. The laboratory is not owned or operated by a manufacturer and no other conflict of interest exists;
   b. The laboratory tested the ignition interlock device in accordance with ~~Sections 1 and 2 of the NHTSA specifications;~~ the Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIIDs), Appendix A-Quality Assurance Plan Template, and Appendix B-Sample Format For Downloaded Data From The Interlock Data Logger, NHTSA, published at 78 FR 26862 to 26867, May 8, 2013.
   c. The laboratory confirms that the ignition interlock device meets or exceeds the test results required under ~~Sections 1 and 2 of the NHTSA specifications;~~ the Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIIDs), Appendix A-Quality Assurance Plan Template, and Appendix B-Sample Format for Downloaded Data From The Interlock Data Logger, NHTSA, published at 78 FR 26862 to 26867, May 8, 2013;
   d. The laboratory used properly maintained equipment and trained personnel to test the ignition interlock device; and
   e. The laboratory presented accurate test results to the ~~Division~~ Department;
5. A list of all authorized installers of the ignition interlock device, including the name, location, telephone number, contact person, and hours of operation of each authorized installer;
6. A copy of the complete written instructions the manufacturer will provide to its authorized installers under R17-5-609 for installation and operation of the ignition interlock device for which the manufacturer seeks certification. The written instructions shall include a requirement for the installer to affix, to each certified ignition interlock device installed, a warning label that conforms to the criteria prescribed under R17-5-609, as illustrated on the application form provided by the ~~Division~~ Department;
7. A copy of the complete written instructions the ~~Manufacturer~~ manufacturer shall provide to its authorized installers under R17-5-609 for distribution under R17-5-704 to participants and other operators of a vehicle equipped with the ignition interlock device for which the manufacturer seeks certification; and
8. A certificate of insurance, issued by an insurance company authorized to transact business in Arizona, specifying:
   a. A product liability policy with a current effective date;
   b. The name and model number of the ignition interlock device model covered by the policy;
   c. Policy coverage of at least $1,000,000;
   d. The manufacturer as the insured and the state of Arizona as an additional insured;
   e. Product liability coverage for defects in manufacture, materials, design, calibration, installation, and operation of the ignition interlock device; and
   f. The insurance company ~~will~~ shall notify the ~~Division~~ Department at least 30 days before canceling the product liability policy.

D. On or before April 1, 2015, a manufacturer shall submit a new application form and all the information required in this Section to the Department to certify any new ignition interlock device, or recertify an existing ignition interlock device, to the NHTSA specifications in subsection (E). For each ignition interlock device, a manufacturer shall submit a new laboratory report from an independent laboratory to the Department that presents supporting data to demonstrate that the ignition interlock device meets or exceeds the test results required by the NHTSA specifications.

E. Beginning on April 1, 2015, for any new installation of an ignition interlock device or replacement of a device on a participant's vehicle, a manufacturer or its authorized installer shall install only a certified ignition interlock device that meets or exceeds the test results required by the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs), Appendix A - Quality Assurance Plan Template, and Appendix B - Sample Format For Downloaded Data from the Interlock Data Logger, NHTSA, published at 78 FR 26862 to 26868, May 8, 2013.

R17-5-605. Application Processing; Time-frames; Exception

A. The ~~Division~~ Department shall process an application for certification under this Article or Article 7, or an application for recertification under R17-5-702, ~~and Article 7,~~ only if an applicant meets all applicable application requirements.

B. The ~~Division~~ Department shall, within 10 days of receiving an application for certification~~,~~ or recertification provide notice to the applicant that the application is either complete or incomplete.
1. The date of receipt is the date the ~~Division~~ Department stamps on the application when received.
2. If an application is incomplete, the notice shall specifically identify what required information is missing.

C. An applicant with an incomplete application shall provide all missing information to the ~~Division~~ Department within 15 days of the date indicated on the notice provided by the ~~Division~~ Department under subsection (B).
1. After receiving all of the required information, the ~~Division~~ Department shall notify the applicant that the application is complete.
2. The ~~Division~~ Department may deny certification or recertification if the applicant fails to provide the required information within ~~10~~ 15 days of the date indicated on the notice provided by the Department under subsection (B).

D. Except as provided under subsection (F), the ~~Director~~ Department shall render a decision on an application for certification or recertification under this Article or Article 7, within ~~45~~ 30 days of the date indicated on the notice acknowledging receipt of a complete application under subsection (B)~~,~~ or provided to the applicant under ~~subsections~~ subsection ~~(B) or~~ (C).

E. For the purpose of A.R.S. § 41-1073, the ~~Division~~ Department establishes the following time-frames for processing an application for certification or recertification under this Article or Article 7:
1. Administrative completeness review time-frame: ~~15~~ 10 days.
2. Substantive review time-frame: 30 days.
3. Overall time-frame: ~~45~~ 40 days.

F. Established time-frames may be ~~adjusted~~ suspended by the ~~Division as needed to obtain~~ Department under A.R.S. § 41-1074 until all external agency approvals required for certifying a new ignition interlock device model are submitted by a manufacturer under R17-5-604.

R17-5-606. Application Completeness; Denial of Ignition Interlock Device Certification; Hearing

A. An application for certification of an ignition interlock device model is complete when the ~~Division~~ Department receives:
1. From the manufacturer, a properly prepared application form;
2. From the manufacturer, all additional items required under R17-5-604(C); and
3. From the Arizona Department of Public Safety, under A.R.S. § 28-1462, written confirmation or disapproval of the independent laboratory's report that the ignition interlock device meets the NHTSA specifications~~.~~ in R17-5-604(C).

B. The Director shall deny an application for certification of an ignition interlock device model if all requirements of subsection (A) are not met, or ~~upon~~ on finding any of the following:
1. The design, materials, or workmanship contains a defect that causes the ignition interlock device model to fail to function as intended;
2. The manufacturer's liability insurance coverage is terminated or canceled;
3. The manufacturer no longer offers the ignition interlock device model for installation under Arizona law;
4. The manufacturer or independent laboratory provided false or inaccurate information to the ~~Division~~ Department relating to the performance of the ignition interlock device model;
5. The components, design, or installation and operating instructions have undergone a modification that causes the ignition interlock device model to be out of compliance with the NHTSA specifications~~;~~ in R17-5-604(C); or
6. The ~~Division~~ Department receives a report of device disapproval from an independent laboratory or other external reviewer.

C. The ~~Division~~ Department shall mail to the manufacturer, written notification of the certification or denial of certification of an ignition interlock device model. A notice denying certification of an ignition interlock device model shall specify the basis for the denial and indicate that the applicant may, within 15 days of the date on the notice, request a hearing on the Director's decision to deny certification by filing a written request with the ~~Division's~~ Department's Executive Hearing Office as prescribed under 17 A.A.C. 1, Article 5.

D. If a manufacturer timely requests a hearing on the Director's decision to deny certification~~,~~ of an ignition interlock device model, the ~~Division's~~ Department's Executive Hearing Office shall conduct the hearing as provided under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5.

R17-5-607. Cancellation of Certification; Hearing

A. The Director shall cancel an ignition interlock device model certification and remove the device from its list of certified ignition interlock devices ~~upon~~ on finding any of the following:
1. The design, materials, or workmanship contains a defect that causes the ignition interlock device model to fail to function as intended;
2. The manufacturer's liability insurance coverage is terminated or canceled;
3. The manufacturer no longer offers the ignition interlock device model for installation under Arizona law;
4. The manufacturer or independent laboratory provided false or inaccurate information to the ~~Division~~ Department relating to the performance of the ignition interlock device model;
5. The components, design, or installation and operating instructions have undergone a modification that causes the

ignition interlock device model to be out of compliance with the NHTSA specifications in R17-5-604(C);
6. The manufacturer instructs the ~~Division~~ Department to cancel its certification of the ignition interlock device model; or
7. The manufacturer, its authorized installer, or the device does not comply with this Article or any other applicable rule or statute.

B. The ~~Division~~ Department, ~~upon~~ on finding any of the conditions described under subsection (A), or on finding that the reporting manufacturer failed to timely remedy the issues identified in the notice provided under R17-5-602(E), shall mail to the manufacturer a notice and order of cancellation of certification for the specific ignition interlock device model. The notice and order of cancellation shall:
1. Specify the basis for the action; ~~and~~
2. Specify the date when the one-year decertification begins and ends; and
~~2.~~3. State that the manufacturer may, within 15 days ~~of the date on the notice,~~ after receipt of a notice and order of manufacturer device model cancellation, file a written request for a hearing with the ~~Division's~~ Department's Executive Hearing Office as prescribed under 17 A.A.C. 1, Article 5, to show cause as to why the ignition interlock device certification should not be cancelled.

C. If a hearing to show cause is timely requested, the ~~Division's~~ Department's Executive Hearing Office shall conduct the hearing as prescribed under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5. The request for a hearing stays the summary cancellation of manufacturer device model certification.

D. Within 10 days after a hearing, the hearing officer shall issue to the manufacturer a written decision, which shall:
1. Provide findings of fact and conclusions of law; and
2. Grant or cancel the certification.

E. If the hearing officer affirms the manufacturer device model cancellation, the manufacturer may seek judicial review under A.R.S. Title 12, Chapter 7, Article 6, within 35 days of the date when a copy of the decision sought to be reviewed is served upon the party affected unless the court grants a stay while the appeal is pending.

~~D.~~F. Within 60 days after the effective date of an order of cancellation, the manufacturer shall, at the manufacturer's own expense, ensure the removal of all ~~decertified~~ ignition interlock devices that are not certified and facilitate the replacement of each device with a certified ignition interlock device.

~~E.~~G. The manufacturer of a previously decertified ignition interlock device model may reapply to the ~~Division~~ Department for certification of the ignition interlock device model under R17-5-604~~.~~ after the one-year device decertification period ends.

H. During the period of cancellation, the Department shall notify each authorized installer of the manufacturer and each service representative that each of them is prohibited from installing the ignition interlock device for which the device certification was cancelled.

I. Cancellation of a manufacturer's device model certification prohibits the manufacturer from performing its duties with respect to the device model that has been cancelled and making the device model available for installation in the state for a period of one year from the latest of the following dates when:
1. The Department cancels a manufacturer's device model certification, or
2. The Department's Executive Hearing Office cancels the manufacturer's device model certification.

R17-5-608. Modification of a Certified Ignition Interlock Device Model

A. A manufacturer shall notify the ~~Division~~ Department in writing at least 10 days before a material modification is made to a certified ignition interlock device model.

B. Before providing a previously certified but materially modified ignition interlock device model for installation in a motor vehicle under an order of an Arizona court or the ~~Division~~ Department, a manufacturer shall:
1. Submit to the ~~Division~~ Department a completed application form and all additional items required under R17-5-604(C), and
2. Obtain certification of the materially modified ignition interlock device from the ~~Division~~ Department.

C. The ~~Division's~~ Department's certification of a materially modified ignition interlock device model does not affect the original certification of the unmodified model.

R17-5-609. Manufacturer Referral to ~~Division-certified~~ Authorized Installers; Manufacturer Oversight of its Authorized Installers

A. A manufacturer shall perform a background records check on a manufacturer's authorized installer to determine:
1. Each authorized installer's past employment history,
2. That each authorized installer provides good customer service and adequately serves the public interest,
3. That each authorized installer has certified that the authorized installer has not had a felony conviction in the five years preceding the individual's request for certification, and
4. The authorized installer's motor vehicle record, driver license status, and the existence of any driving under the influence convictions.

B. In this Section, conviction means that a court of competent jurisdiction, after adjudication, found the individual guilty.

~~A.~~C. A manufacturer shall refer a participant only to ~~a Division-certified~~ an authorized installer.

~~**B.**~~**D.** A manufacturer shall provide the ~~Division~~ Department with a toll-free telephone number for a participant to call to obtain names, locations, telephone numbers, contact ~~people,~~ persons, and hours of operation for its authorized installers.

E. A manufacturer shall notify the Department within 10 days of a change of address of its principal or established place of business in this state.

~~**C.**~~**F.** A manufacturer shall ensure that its authorized installer follows the installation and operation procedures established by the manufacturer.

~~**D.**~~**G.** A manufacturer shall ensure that its authorized installer receives and maintains all necessary training and skills required to install, troubleshoot, examine, and verify proper operation of the certified ignition interlock device.

~~**E.**~~**H.** A manufacturer shall ensure that its authorized installer:

1. Complies with the manufacturer's procedures for removing a certified ignition interlock device from a vehicle, and
2. Electronically notifies the ~~Division~~ Department within 24 hours after removing a certified ignition interlock device.

~~**F.**~~**I.** A manufacturer shall ensure that its authorized installer distributes ~~to every participant,~~ and makes available for every ~~person~~ participant operating a motor vehicle equipped with a certified ignition interlock device, the manufacturer's written instructions for the following:

1. Operating a motor vehicle equipped with the certified ignition interlock device,
2. Cleaning and caring for the certified ignition interlock device, and
3. Identifying and addressing any vehicle malfunctions or repairs that may affect the certified ignition interlock device.

~~**G.**~~**J.** A manufacturer shall ensure that its authorized installer provides to every participant, and makes available for any ~~person~~ participant operating a motor vehicle equipped with a certified ignition interlock device, the manufacturer's specified training ~~in~~ on how to operate a motor vehicle equipped with the device.

~~**H.**~~**K.** A manufacturer or installer shall provide a warning label, for each certified ignition interlock device installed, which shall:

1. Be of a size appropriate to each device model;
2. Have an orange background; and
3. Contain the following language in black lettering: "Warning! Any person tampering with, circumventing, or otherwise misusing this Ignition Interlock Device, is guilty of a Class 1 misdemeanor."

~~**I.**~~**L.** A manufacturer shall ensure that its authorized installer affixes conspicuously to each installed certified ignition interlock device the warning label described under subsection ~~(H)~~(K).

R17-5-610. Installation Verification; Accuracy Check; Noncompliance and Removal Reporting; Report Review

A. A participant shall have installed in a motor vehicle, only an ignition interlock device certified by the ~~Division~~ Department under R17-5-604.

B. A manufacturer shall comply, and ensure that its authorized installer complies, with its written procedures for the installation of a certified ignition interlock device.

C. Certified ignition interlock device installation verification.

1. A manufacturer shall electronically transmit, or ensure that its authorized installer electronically transmits, a Certified Ignition Interlock Device Summarized Reporting Record to the ~~Division~~ Department within 24 hours of installing a certified ignition interlock device.
2. The electronic Certified Ignition Interlock Device Summarized Reporting Record for installation verification shall contain all of the following information:
   a. Installer ID;
   b. Participant's full name (first, middle, last and suffix);
   c. Date of birth;
   d. Driver license or customer number;
   e. Report date;
   f. Install date;
   g. Removal date; and
   h. Report ~~Type~~ type.

D. Certified ignition interlock device accuracy and compliance check.

1. A manufacturer shall ensure that its authorized installer schedules a participant for accuracy and compliance checks as follows:
   a. 30 days, 60 days, and 90 days after installation of a certified ignition interlock device; and
   b. At least once every ~~60~~ 90 days after the first 90-day accuracy and compliance check~~.~~ until the participant is eligible for device removal.
2. A manufacturer shall electronically transmit, or ensure that ~~its~~ the manufacturer's authorized reporting installer electronically transmits, a Certified Ignition Interlock Device Summarized Reporting Record to the ~~Division~~ Department within 24 hours after performing an accuracy and compliance check on an installed certified ignition interlock device.
3. A manufacturer or the manufacturer's authorized reporting installer shall submit to the Department the following valid and substantiated proof or evidence of a reportable activity related to a violation, as prescribed in subsection (F), within 10 days by electronic means or by regular mail, which shall include:

a. A report summarizing why the data logger or any other evidence confirms the occurrence of a violation; and
b. A data logger that shows at least 12 hours of data before and after the violation.

4. A manufacturer or the manufacturer's authorized reporting installer may submit to the Department the following additional valid and substantiated proof or evidence of a reportable activity related to a violation, as prescribed in subsection (F), if available, within 10 days by electronic means or by regular mail, which may include:
   a. Photographs;
   b. Video recordings;
   c. Written statements; and
   d. Any other evidence relevant to a violation.

~~3.~~5. The electronic Certified Ignition Interlock Device Summarized Reporting Record for the accuracy and compliance check shall contain all of the following information:
   a. Installer ID;
   b. Participant's full name (first, middle, last and suffix);
   c. Date of birth;
   d. Driver license or customer number;
   e. Report date;
   f. Install date;
   g. Removal date;
   h. Report ~~Type~~ type; ~~and~~
   i. Missed rolling retest count and dates;
   ~~i.~~j. Noncompliance code ~~and breath alcohol concentration violation count as applicable.~~;
   k. Alcohol concentration violation count and dates;
   l. Tampering violation date;
   m. Device download date; and
   n. Device download time.

~~E.~~ ~~Certified ignition interlock device noncompliance report.~~

~~1. A manufacturer shall electronically transmit, or ensure that its authorized installer electronically transmits, a Certified Ignition Interlock Device Summarized Reporting Record to the Division, within 24 hours after conducting an accuracy and compliance check, when an installed certified ignition interlock device displays evidence of tampering, circumvention, or misuse.~~

~~2. The electronic Certified Ignition Interlock Device Summarized Reporting Record for noncompliance shall indicate the condition of noncompliance and contain all of the following information:~~
   ~~a. Installer ID;~~
   ~~b. Participant's full name (first, middle, last and suffix);~~
   ~~c. Date of birth;~~
   ~~d. Driver license or customer number;~~
   ~~e. Report date;~~
   ~~f. Install date;~~
   ~~g. Removal date;~~
   ~~h. Report Type; and~~
   ~~i. Noncompliance code and breath alcohol concentration violation count as applicable.~~

~~F.~~**E.** Certified ignition interlock device removal report.

1. A manufacturer shall electronically transmit, or ensure that its authorized installer electronically transmits, a Certified Ignition Interlock Device Summarized Reporting Record to the ~~Division~~ Department within 24 hours if a certified ignition interlock device is removed before the end of a participant's certified ignition interlock device ~~requirement~~ period.
2. The electronic Certified Ignition Interlock Device Summarized Reporting Record for removal of a device shall indicate the condition of noncompliance and contain all of the following information:
   a. Installer ID;
   b. Participant's full name (first, middle, last and suffix);
   c. Date of birth;
   d. Driver license or customer number;
   e. Report date;
   f. Install date;
   g. Removal date;
   h. Report ~~Type~~ type; and
   i. Noncompliance code ~~and breath alcohol concentration violation count as applicable~~.

F. Reportable activity for a participant's noncompliance with these rules and A.R.S. Title 28, Chapter 4, Article 5, shall be limited to valid and substantiated instances by a participant of any of the following:

1. Tampering with a certified ignition interlock device as defined in A.R.S. § 28-1301;
2. A missed rolling retest as defined in R17-5-601;
3. Failing to provide proof of compliance or inspection of the certified ignition interlock device as required under A.R.S. § 28-1461(E)(4);
4. Attempting to operate the vehicle with an alcohol concentration of 0.08 or more as prescribed in A.R.S. § 28-1381(A) if the participant is at least 21 years of age;
5. Attempting to operate the vehicle with an alcohol concentration in excess of the startup set point if the participant is under 21 years of age; or
6. Disconnecting or removing a certified ignition interlock device, except:
   a. On receipt of Department authorization to remove the device;
   b. On repair of the vehicle, if the participant provided to the manufacturer, installer, or service center advance notice of the repair and the anticipated completion date; or
   c. On replacement of one vehicle with another vehicle if replacement of the device is accomplished within 72 hours of device removal.

G. A participant shall not avoid compliance with the rolling retest requirement by turning off a motor vehicle's ignition. A missed rolling retest is reportable activity for a participant's noncompliance under subsection (F).

H. The Department shall count one missed rolling retest for a participant who refuses or fails to provide a valid and substantiated breath sample in response to a requested rolling retest if not followed by the participant providing a valid and substantiated breath sample within six minutes.

I. Beginning on April 1, 2015, the Department shall extend the ignition interlock period for six months, as provided in A.R.S. § 28-1461(E) for any set of four missed rolling retests that occur during the participant's ignition interlock period.

J. A manufacturer or its authorized reporting installer shall screen a participant's data loggers to ensure that there is no improper reporting. A manufacturer or its authorized reporting installer shall report to the Department any valid and substantiated missed rolling retests, as defined in R17-5-601, that occur during a participant's ignition interlock period.

K. A manufacturer shall provide written notice, as requested, to the Department of each authorized reporting installer who is authorized to send data loggers, reports, and other participant records to the Department.

L. A manufacturer or its authorized installer shall ensure that a certified ignition interlock device has the necessary programming to identify each participant's ignition interlock period and to report and send data and violations to the Department as required by these rules.

M. A manufacturer or its authorized reporting installer shall review within 10 days all reports generated by the Department and returned to the manufacturer or installer for verification of accurate reporting. If a manufacturer or its authorized installer finds that the reported information does not indicate valid and substantiated evidence of a violation, the manufacturer or its authorized installer shall immediately contact the Department to correct the participant's record before corrective action is initiated against a participant as a result of misreported ignition interlock data.

N. A manufacturer or its authorized reporting installer shall immediately contact the Department if the manufacturer or its authorized reporting installer finds that the reported information indicates:
1. An obvious mechanical failure of a certified ignition interlock device;
2. Obvious errors in the recorded, certified ignition interlock device data that cannot be attributed to a participant's actions; or
3. Obvious errors in the transmission of certified ignition interlock device data to the Department, including misreported instances of tampering.

R17-5-611. Emergency Assistance by Manufacturers and Authorized Installers; Continuity of Serviceto Participants

A. A manufacturer shall ensure that its authorized installer provides to each participant a 24-hour emergency phone number for assistance in the event a certified ignition interlock device fails to operate properly or a vehicle experiences a problem relating to the installation, operation, or failure of a certified ignition interlock device.
1. Within two hours after receiving a participant's call for emergency assistance, if the authorized installer determines that a vehicle is experiencing a problem relating to the installation, operation, or failure of a certified ignition interlock device, the authorized installer shall either:
   a. Provide telephonically, the technical information required for the participant to resolve the issue; or
   b. Provide or arrange for appropriate towing or roadside assistance services if unable to resolve the issue telephonically.
2. Within 48 hours after receiving a participant's call for emergency assistance, the authorized installer shall either:
   a. Make the certified ignition interlock device functional, or
   b. Replace the certified ignition interlock device.

B. A manufacturer shall ensure uninterrupted service to a participant for the duration of the participant's certified ignition interlock ~~device requirement,~~ period, which shall include facilitating the immediate replacement of an authorized installer if the installer goes out of business~~, or~~ its ~~certification~~ recertification is denied, or its certification is cancelled by the ~~Division~~ Department under R17-5-708.

1. If a manufacturer terminates its authorized installer's appointment, or the ~~Division~~ Department cancels the installer's certification or denies recertification under R17-5-708, the manufacturer shall:
   a. Obtain participant records from its formerly authorized installer; and
   b. Provide the participant records to a new authorized installer for retention according to R17-5-612; or
   c. Retain the participant records according to R17-5-612, if a new authorized installer is not appointed.
2. If a manufacturer appoints a new authorized installer, the manufacturer shall:
   a. Ensure that the new authorized installer operates either:
      i. A mobile service center that is located within 75 miles of the Arizona residence of each participant with an installed certified ignition interlock device provided by the manufacturer; or
      ii. A service center that is a permanent facility located within 125 miles of the Arizona residence of each participant with an installed certified ignition interlock device provided by the manufacturer; and
   b. Notify each participant affected by the appointment of the new authorized installer at least 30 days before the appointment becomes effective.
3. If a manufacturer does not appoint a new authorized installer, or its new authorized installer cannot provide service as prescribed under subsection ~~(2)~~(B)(2), the manufacturer, at no cost to the participant, shall:
   a. Provide written notification to all participants affected by the change of authorized installers at least 30 days before the authorized installer is to discontinue service. The written notification shall inform the participant of the manufacturer's responsibility to facilitate removal and replacement of the certified ignition interlock device and shall provide all of the instructions necessary for the participant to successfully exchange the device;
   b. Remove the device from the vehicle of each affected participant; and
   c. Facilitate the replacement of each device through a manufacturer with an authorized installer that can provide service as prescribed under subsection ~~(2)~~(B)(2).
4. A manufacturer shall notify the ~~Division~~ Department within 72 hours of replacing its authorized installer.
5. A manufacturer shall submit to the ~~Division~~ Department an updated list of its authorized installers within 10 days after making a change to the list provided to the ~~Division~~ Department under R17-5-604.

C. Except in an emergency situation, a manufacturer or its authorized installer shall not remove another manufacturer's certified ignition interlock device without the express permission of that manufacturer.
1. If in an emergency situation a manufacturer or its authorized installer removes another manufacturer's certified ignition interlock device, that manufacturer or authorized installer shall return the device to the original installer within 72 hours of the emergency removal; and
2. The original installer, ~~upon~~ on receipt of the device, shall provide to the ~~Division~~ Department an electronic report of the device removal under R17-5-610, which shall include the transmission of all data stored in its data storage system.

D. A manufacturer shall facilitate the immediate replacement of its authorized installer's service center if the service center goes out of business or ~~its Division~~ the installer's certification is cancelled or recertification is ~~cancelled~~ denied under R17-5-708. The manufacturer shall notify the ~~Division~~ Department within 72 hours of replacing a service center.
1. If an out-of-business or cancelled service center is replaced, the manufacturer shall make all reasonable efforts to obtain, from the service center being replaced, all participant records and data required to be retained under R17-5-612. The records shall be provided to, and maintained by~~,~~ the new service center.
2. If an out-of-business or cancelled service center is not replaced, the manufacturer shall retain the records and data as required under R17-5-612. The ~~Division~~ Department shall be notified of this event within 72 hours.
   a. The manufacturer shall facilitate removal of all installed certified ignition interlock devices no longer serviced by the out-of-business or cancelled service center, and shall bear the cost of replacing each device with a serviceable certified ignition interlock device, even if the replacement device must be provided through an alternate manufacturer.
   b. The manufacturer shall, within 30 days, make a reasonable effort to notify its customers of the change of service center or replacement of a device.
3. If ~~neither subsection (1) nor (2) can be accomplished,~~ the manufacturer ~~shall,~~ cannot comply with subsection (D)(1) or subsection (D)(2) within 60 days~~:~~, the manufacturer shall:
   a. Notify its customers and the ~~Division~~ Department that service will be terminated; and
   b. Remove each device at no cost to the customer.

R17-5-612. Records Retention; Submission of Copies and Quarterly Reports~~; Periodic Inspections~~

A. Records retention. A manufacturer shall retain, or ensure that its authorized installer retains, a participant's records in an electronic or a paper format for ~~five~~ three years after the removal of a certified ignition interlock device. The retained records shall consist of every document relating to installation and operation of the certified ignition interlock device. The installer and the service center shall maintain all daily participant driving activity records in the device's data storage system, and shall make participant records available to the Department on request at the principal place of business.

B. Copies of records and quarterly reports.
1. A manufacturer shall ensure that its authorized reporting installer or the manufacturer provides copies of participants' records to the ~~Division~~ Department within 10 days after ~~Division~~ Department personnel make a request for copies of

records, including records relating to installation and operation of the certified ignition interlock device.

2. A manufacturer shall ensure that its authorized installer mails~~, faxes,~~ or e-mails to the ~~Division~~ Department, by the 10th day of January, April, July, and October, a quarterly report containing the following information for the previous three months:
   a. The number of certified ignition interlock devices the authorized installer currently has in service;
   b. The number of certified ignition interlock devices installed since the previous quarterly report; and
   c. The number of certified ignition interlock devices removed by the authorized installer since the previous quarterly report.

~~**C.** Periodic inspections. The Division shall periodically conduct an inspection at the premises of a manufacturer or its authorized installer, under A.R.S. § 41-1009 and R17-5-613. The inspection shall determine whether the manufacturer, its authorized installer, the service center of the authorized installer, and the installer-certified service representatives are in compliance with this Article and Article 7.~~

R17-5-613. ~~Ignition Interlock Investigator~~ Inspections

A. The ~~Division's ignition interlock investigator~~ Department shall investigate any complaint or report of misconduct brought against a certified ignition interlock device manufacturer, installer, ~~service center,~~ or installer-certified service representative, or against a service center for noncompliance with a provision of Articles 6 or 7 of this Chapter or A.R.S. Title 28, Chapter 4, Article 5.

~~**B.** Inspection of a manufacturer, installer, or service center under Articles 6 or 7 of this Chapter shall be conducted in accordance with A.R.S. § 41-1009. The inspection shall include an examination of participant records and verification of an adequate supply of the warning labels and written instructions required to be made available under A.R.S. § 28-1462, R17-5-609, and R17-5-704.~~

~~**C.**~~**B.** ~~The Division's ignition interlock investigator shall perform~~ To comply with certification and the enforcement provisions of A.R.S. § 28-1465, the Department may request the consent of a manufacturer or a manufacturer's authorized installer for periodic onsite inspections at the established place of business of a manufacturer, a manufacturer's authorized installer, or a service center ~~as needed to verify continuous~~ to determine whether a manufacturer or a manufacturer's authorized installer is in compliance with the ~~Division's~~ Department's ignition interlock program requirements established under Articles 6 and 7 of this Chapter and A.R.S. Title 28, Chapter 4, Article 5.

C. The Department shall conduct an inspection of a manufacturer, an installer, or a service center under the provisions of A.R.S. § 41-1009. The inspection shall include an examination of participant records and verification of an adequate supply of the warning labels that meet the requirements of A.R.S. § 28-1462, R17-5-609, and R17-5-704.

ARTICLE 7. IGNITION INTERLOCK DEVICE INSTALLERS

R17-5-701. Definitions

In addition to the definitions provided under ~~A.R.S. § 28-1301,~~ A.R.S. §§ 28-101 and 28-1301, ~~and unless the context otherwise requires,~~ the definitions provided under ~~A.A.C. R17-4-408 and~~ R17-5-601 apply to this Article unless the context otherwise requires.

R17-5-702. Ignition Interlock Device Installer Certification; Application Requirements; Recertification

A. A manufacturer's authorized installer shall be certified by the ~~Division~~ Department before installing a certified ignition interlock device, ~~under Arizona law.~~ and shall be recertified annually by the Department to continue to install a certified ignition interlock device under Arizona law.

B. The Department may establish a system of staggered recertification for authorized installers throughout the twelve months of the year. If the Department approves an installer's certification or recertification, the certification or recertification shall extend for one year from the date of Department approval. A manufacturer's authorized installer shall submit to the Department the information required in subsection (D) on an annual basis for recertification. The Department may accept documents submitted with the initial application for certification, subject to Department approval.

~~**B.**~~**C.** A manufacturer's authorized installer shall obtain from the manufacturer, as provided under R17-5-609, all necessary training and skills required to install, troubleshoot, examine, and verify proper operation of the manufacturer's certified ignition interlock device.

~~**C.**~~**D.** A manufacturer's authorized installer shall submit to the ~~Division~~ Department a properly completed application for installer certification or recertification. The application for installer certification or recertification shall provide:

1. The authorized installer's name;
2. The authorized installer's business address and telephone number;
3. The authorized installer's status as a sole proprietorship, partnership, limited liability company, or corporation;
4. The name of the sole proprietor or of each partner, officer, director, manager, member, agent, or 20% or more stockholder;
5. The name and model number of each certified ignition interlock device the authorized installer intends to install; and
6. The following statements, signed by the authorized installer and acknowledged by a notary public or ~~Division~~ Department agent:

a. A statement that all information provided on the application form, including all information provided on any attachment to the application form, is complete, true, and correct;
b. A statement that the authorized installer agrees to indemnify and hold harmless from all liability the state of Arizona and any department, division, agency, officer, employee, or agent of the state of Arizona;
c. A statement that the authorized installer agrees to comply with all requirements under this Article; and
d. A statement that the authorized installer agrees to immediately notify the ~~Division~~ Department of any change to the information provided on the application form.

~~**D.**~~**E.** The ~~Division~~ Department shall process an application for installer certification or recertification as provided under R17-5-605.

~~**E.**~~**F.** ~~Division~~ Department certification issued to an authorized installer under this Article shall not expire as long as the installer remains authorized by a manufacturer to install its certified ignition interlock device model under Arizona law~~.~~ and the installer completes all requirements for annual recertification in the time period prescribed in this Section.

1. If a ~~Division-certified~~ Department-certified installer is no longer authorized by a manufacturer to install its certified ignition interlock device, the manufacturer shall notify the Department within 24 hours that ~~the installer's certification is immediately expired.~~ an installer is no longer authorized by the manufacturer.
2. If the installer again becomes authorized by a manufacturer to install its certified ignition interlock device, the installer may reapply to the ~~Division~~ Department for certification under this Article by submitting a new application.

~~**F.**~~**G.** A ~~Division-certified~~ Department-certified ignition interlock device installer shall notify the ~~Division~~ Department within 24 hours of making a decision to relocate a fixed-site service center.

~~**G.**~~**H.** A ~~Division-certified ignition interlock device~~ Department-certified installer shall train and certify each of its service representatives on the proper installation of a certified ignition interlock device before allowing the service representative to install the certified ignition interlock device.

~~**H.**~~**I.** A ~~Division-certified~~ Department-certified ignition interlock device installer shall provide to the ~~Division~~ Department a current list of the names of each of its certified service representatives on a quarterly basis. The installer shall electronically notify the ~~Division~~ Department within 24 hours ~~of~~ after making a change to its list.

R17-5-703. Ignition Interlock Device Installer Bond Requirements; Recertification

A. Before installing, servicing, or removing a certified ignition interlock device, an installer shall:
1. Be appointed by a manufacturer as an authorized installer of its certified ignition interlock device;
2. Obtain an ignition interlock installer bond from a surety company authorized by the Arizona Department of Insurance to conduct general surety business in Arizona. The ignition interlock installer bond shall be:
   a. In the amount of $25,000;
   b. On the approved form provided by the ~~Division~~ Department; and
   c. Maintained for as long as the installer intends to install, service, or remove ~~Division-certified~~ Department-certified ignition interlock devices under Arizona law;
3. Submit the original completed ignition interlock installer bond to the Arizona Department of Transportation, Motor Vehicle Division, Ignition Interlock Program, 1801 W. Jefferson St. MD530M, Phoenix, AZ 85007; and
4. Receive ~~Division~~ Department certification or recertification under R17-5-702.

B. An installer authorized by a manufacturer and certified or recertified by the ~~Division~~ Department to install, service, or remove more than one certified ignition interlock device model needs only one bond~~.~~, which shall extend as long as the installer is certified or recertified.

R17-5-704. ~~Division-certified~~ Authorized Installer Responsibilities

A. An authorized installer certified by the ~~Division~~ Department to install a certified ignition interlock device shall:
1. Follow the installation and operating procedures established~~,~~ and provided~~,~~ by the manufacturer;
2. Acquire and maintain all necessary training and skills specified by the manufacturer for installing, troubleshooting, examining, and verifying the proper operation of its certified ignition interlock device;
3. Comply with all of the manufacturer's procedures for removing the certified ignition interlock device from a vehicle;
4. Electronically notify the ~~Division~~ Department within 24 hours after removing a certified ignition interlock device under R17-5-610;
5. Provide to the manufacturer, or to the ~~Division~~ Department if delegated by the manufacturer, an accurate electronic reporting of all applicable information required of the manufacturer under R17-5-610~~;~~ and R17-5-612;
6. Provide to every participant, and make available for every person operating a motor vehicle equipped with the certified ignition interlock device, a copy of the manufacturer's written instructions for the following:
   a. Operating a motor vehicle equipped with the certified ignition interlock device;
   b. Cleaning and caring for the certified ignition interlock device; and
   c. Identifying and addressing vehicle malfunctions or repairs that may affect the certified ignition interlock device;
7. Ensure that each participant receives an operator's manual and is further instructed regarding all of the following:
   a. How to use the system;
   b. How to obtain service for the system;

c. How to find answers to any additional questions;
d. How the alcohol retest feature works;
e. How drinking alcohol before a test may result in a reading of sensitive or fail;
f. How the ~~handset of the~~ device shall not be removed, except by an installer-certified service representative;
g. How missing an appointment for a regularly scheduled accuracy check will cause the certified ignition interlock device to enter into a lock-out condition that will emit a unique cue, either auditory, visual, or both, to warn the driver that after 72 hours the vehicle will not start. It shall be the responsibility of each participant to have the car towed to the service center if a lock-out condition occurs;
h. How noncompliance with a regularly scheduled accuracy check shall result in suspension under A.R.S. § 28-1463 of the participant's driver license until proof of compliance is submitted to the ~~Division~~ Department under ~~A.R.S. § 28-1463~~ A.R.S. § 28-1461; and the duration of the participant's certified ignition interlock device requirement shall be extended under ~~A.R.S. § 28-1464~~ A.R.S. § 28-1461 ~~and A.A.C. R17-4-408~~;
i. What the penalties are for tampering with~~, circumventing,~~ or misusing the system;
j. What will happen after failing a start-up breath alcohol test; ~~and~~
k. What will happen after ~~failing a rolling retest.~~ a participant has a set of four valid and substantiated missed rolling retests during the participant's ignition interlock period; and that a participant shall not avoid compliance with the rolling retest requirement by turning off a motor vehicle's ignition; and
l. What events or actions will result in a lock-out of the certified ignition interlock device.

8. Ensure that each participant demonstrates:
   a. A properly delivered alveolar breath sample; and
   b. An understanding of how the abort test feature works.
9. Affix conspicuously, the warning label provided by the ~~Manufacturer~~ manufacturer under R17-5-609.
10. Check each device for evidence of tampering at least once every ~~60~~ 90 days or more frequently if needed. This anti-circumvention check shall be conducted at each participant's regularly scheduled accuracy and compliance check required under R17-5-610.
11. Notify the ~~Division~~ Department electronically under R17-5-610 if any evidence of tampering is discovered~~.~~ and submit valid and substantiated proof or evidence of a reportable activity.

B. An installer shall not permit a service representative whose driving privilege is limited pursuant to A.R.S. §§ 28-1381, 28-1382, 28-1383, or 28-3319, or restricted under A.R.S. § 28-1402 to install, inspect, download, calibrate, repair, monitor, maintain, service, or remove a certified ignition interlock device until the restrictive period of the service representative's driving privilege ends. An installer whose driving privilege is limited pursuant to A.R.S. §§ 28-1381, 28-1382, 28-1383, or 28-3319, or restricted under A.R.S. § 28-1402 shall not install, inspect, download, calibrate, repair, monitor, maintain, service, or remove a certified ignition interlock device until the restrictive period of the installer's driving privilege ends.

R17-5-705. Installer-certified Service Representatives

A. ~~Initial certification~~ Certification requirements.
1. To achieve certification as a service representative, an individual shall obtain written documentation from a ~~Division-certified~~ Department-certified ignition interlock device installer documenting that the individual is currently trained in each aspect involved with the specific certified ignition interlock device for which the individual seeks certification to install or service.
2. An installer shall not certify as a service representative, any individual with a felony conviction in the five years preceding the individual's request for certification. In this Section, conviction means that a court of competent jurisdiction adjudicated the individual guilty.
~~3. The Division with advance notice to the installers, may require additional standards for installer certification of its service representatives when needed to ensure compliance with the Division's ignition interlock program.~~

B. Proficiency requirements.
1. It is the responsibility of the installer to ensure that its certified service representatives maintain proficiency in each aspect involved with each specific certified ignition interlock device model the individual is certified to install or service.
2. The ~~Division's ignition interlock investigator~~ Department may at any time require an installer-certified service representative to demonstrate competency in the installation, inspection, downloading, calibrating, repairing, monitoring, maintaining, servicing or removal of a specific certified ignition interlock device. ~~A failure~~ Failure of the installer-certified service representative to demonstrate proficiency to the ~~Division's~~ Department ~~ignition interlock investigator~~ may result in ~~disciplinary~~ corrective action against the installer as provided under ~~R17-5-707~~ R17-5-601.

R17-5-706. Accuracy and Compliance Check; Requirements

A. An installer-certified service representative shall inspect, maintain, and check each certified ignition interlock device for calibration accuracy and operational performance before the device is placed into, or returned to~~,~~ service.

B. The installer-certified service representative shall perform each accuracy and compliance check in accordance with NHTSA specifications as referenced in R17-5-604(C) at a service center authorized by ~~the~~ an installer ~~and~~ certified by the

~~Division~~ Department under ~~R17-5-707~~ R17-5-702.

C. The accuracy and compliance check performed under R17-5-610 shall include an inspection of the device to verify that it is properly functioning in accordance with all of the following criteria:
1. Accuracy standards as prescribed under R17-5-603;
   a. The device shall be calibrated before placed into, or returned to~~,~~ service.
   b. ~~The device shall be subjected to a calibration test before returning it to service.~~ ~~This~~ The calibration test shall consist of introducing to the device a known alcohol concentration from a reference sample device, the analysis of which indicates the device's agreement with the known concentration. The installer's software shall be capable of performing, documenting, and reporting the result of this calibration test. The calibration test result ~~described herein~~ shall verify the accuracy of the ignition interlock device according to the standards prescribed under R17-5-603; and
2. Anticircumvention standards and operational features as prescribed under R17-5-603.

D. The calibration test referenced under subsection (C)~~(1)~~ shall be performed when the information uploaded from a device indicates that the device has experienced an interruption in service or was completely disconnected. Additionally, the complete device shall be examined for evidence of tampering ~~and circumvention~~ while it is still attached to the vehicle.

E. If calibration confirmation test results reveal that the device is not properly calibrated, the device shall be recalibrated to restore the accuracy standards prescribed under R17-5-603 before the device is returned to service.

F. At least once every 90 days, an installer-certified service representative shall perform a physical inspection of the ignition interlock device while it is still attached to the vehicle.

G. An installer-certified service representative shall perform a physical inspection of the ignition interlock device at other times when the data logger indicates that tampering has occurred and shall maintain a log showing the findings.

~~F.~~H. If at any time an individual device fails to meet the provisions of this Section, the manufacturer, installer, service center, or installer-certified service representative shall either:
1. Repair, recalibrate, and retest the device to ensure that it does meet all applicable standards; or
2. Remove the device from service.

R17-5-707. ~~Certification and~~ Inspection of Service Centers; Application

A. A service center, whether located on a fixed site or mobile, shall ~~be approved and certified by the Division~~ meet the requirements necessary to maintain installer certification under this Article before it is used by an installer to conduct certified ignition interlock device related business in this state.

B. ~~For Division approval and certification of a service center, an~~ An installer shall submit to the ~~Division~~ Department a separate application for each individual service center the installer intends to use for conducting certified ignition interlock device related business in this state.

C. On an application for ~~the approval and certification of~~ a service center, available from the ~~Division~~ Department, an installer shall identify:
1. The physical location of the service center;
2. The certified ignition interlock device, or devices, to be merchandised and serviced at the location; and
3. The reference sample device, or devices, that will be used at the location.

D. An installer shall attach~~,~~ to the application submitted to the ~~Division~~ Department under subsection (B), a statement from the manufacturer acknowledging that the installer is authorized to install the certified ignition interlock device, or devices, described on the application.

E. ~~An installer applying for Division approval and certification of a service center shall agree to:~~ The Department may request an installer applying to meet the requirements for a service center to consent to allow the Department access to the service center for inspection under subsection (H).
~~1. Allow the Division access to the service center for inspection under subsection (G); and~~
~~2. Comply with all provisions under this Article and A.R.S. Title 28, Chapter 4, Article 5.~~

F. An installer applying for a service center shall agree to comply with all provisions under this Article and A.R.S. Title 28, Chapter 4, Article 5.

~~F.~~G. ~~For Division approval and certification of~~ To operate a service center, the installer's ignition interlock device testing facilities, equipment, and the procedures used in the service center shall meet the following conditions:
1. A fixed-site service center shall be located in a facility that ~~properly and successfully~~ accommodates installing, inspecting, downloading, calibrating, repairing, monitoring, maintaining, servicing, and removing a specific ignition interlock device consistent with the requirements of this Article. The installer shall:
   a. Provide a designated waiting area for the participant that is separate from the installation area; and
   b. Ensure that no participant witnesses installation of the certified ignition interlock device.
2. A mobile service center shall be equipped with the same materials and capacities prescribed under subsection ~~(1)~~(G)(1). An installer or service representative operating a mobile service center shall:
   a. Provide a designated waiting area for the participant that is separate from the area used for the installation area; and
   b. Ensure that no participant witnesses installation of the certified ignition interlock device.

3. The installer, whether operating a fixed-site service center, or mobile, shall ensure that its certified service representatives utilize all of the following:
   a. The analysis of a reference sample such as headspace gas from a mixture of water and alcohol, the results of which shall agree with the reference sample predicted value, or other methodologies approved by the ~~Division~~ Department. The preparatory documentation on the reference sample solution, such as a certificate of analysis, shall be made available to the ~~Division upon~~ Department on request.
   b. The startup set point value established under ~~R17-5-603~~ R17-5-603(A). All analytical results shall be expressed in grams of alcohol per 210 liters of breath (g/210L).
   c. The most current versions of manufacturer software and firmware to ensure continuous compliance under this Article and A.R.S. Title 28, Chapter 4, Article 5.
4. Only a properly trained installer-certified service representative shall perform certified ignition interlock device related services rendered through a service center.
   a. The installer shall maintain sufficient staff at each service center to ensure an acceptable level of service. The service center shall always be staffed with at least one ~~certified~~ installer-certified service representative.
   b. The installer shall schedule accuracy and compliance checks at each service center in a manner that will not deprive a participant of an acceptable level of service.
   c. The installer's software shall document the certified service representative performing each accuracy and compliance check and shall record the date each service is performed.
   d. ~~Division-certified~~ Department-certified installers may train potential certified service representatives in the service center only under the direct supervision of a currently certified service representative.
5. The installer shall agree to:
   a. Submit a violation as defined in R17-5-601 regarding a participant's noncompliance to the ~~Division~~ Department ~~as prescribed under~~ ~~R17-5-610~~ by providing valid and substantiated proof or evidence of a reportable activity as required in R17-5-610(D) no later than 24 hours after the installer discovers the violation;
   b. Maintain complete records in an electronic or paper format of each device installation for ~~five~~ three years from the date of its removal;
   c. Require each applicant seeking installer certification as a service representative to certify that ~~he or she~~ the applicant has not been convicted of a felony within the five years preceding the date of application;
   d. Retain the five-year felony certification required of each installer-certified service representative under subsection ~~(c)~~(G)(5)(c) for five years after the date of the employee's separation from employment; and
   e. Make available to the ~~Division upon~~ Department on request, either by inspection or in hard copy form, all records relating to the installer's ignition interlock device operations.
6. The installer shall ensure that all anticircumvention features are activated on each installed certified ignition interlock device.
7. The installer shall install and inspect each certified ignition interlock device as provided under this Article.
   a. Each time an installer uploads the information from a participant's certified ignition interlock device, the installer-certified service representative shall perform a visual inspection of the vehicle, the device, and the device's wiring to ensure that no tampering ~~or circumvention~~ has occurred during the monitoring period.
   b. The calibration test referenced under R17-5-706 shall be performed if the downloaded device information indicates that the device has experienced an interruption in service or was completely disconnected.
8. The installer shall agree to abide by conditions for the removal of ~~an~~ a certified ignition interlock device, including but not limited to the following:
   a. ~~No ignition interlock device shall be removed without notifying~~ Provide electronic notification to the ~~Division~~ Department of ~~the~~ device removal under ~~R17-5-610.~~ R17-5-610(E) within 24 hours and electronically submit the required reporting record.
   b. A service representative or service center shall not remove the ~~certified ignition~~ certified ignition interlock device of another manufacturer, except in an emergency, or other special circumstance authorized by the ~~Division~~ Department. All ~~such~~ removals shall be documented and reported to the ~~Division~~ Department. All device removal records shall be retained as prescribed under R17-5-612.
   c. When a participant ~~requests~~ makes a request to exchange one manufacturer's device for the device of another manufacturer, the installer of the original device shall notify the ~~Division~~ Department of the device removal under ~~R17-5-610.~~ R17-5-610(E).

~~G.~~**H.** The ~~Division~~ Department may cancel the certification of an installer~~,~~ ~~or~~ prohibiting operation of its service center if the installer or service center is ~~found to be operating in violation of~~ not complying with any provision under this Article, engaging in improper reporting as defined in R17-5-601, not complying with reporting provisions in R17-5-610, or not complying with A.R.S. Title 28, Chapter 4, Article 5. To ensure continuous compliance with ~~all provisions under this Article and A.R.S. Title 28, Chapter 4, Article 5,~~ the Department's certified ignition interlock program requirements, the ~~Division's ignition interlock investigator~~ Department may inspect an installer's service center and take corrective action against the installer as provided under ~~A.R.S. § 41-1009~~ R17-5-601 if a deficiency is identified during an inspection con-

ducted under R17-5-613.

~~H.~~**I.** An installer shall designate a custodian of records who shall, if required in an administrative hearing or court proceeding, provide testimony concerning the interpretation of data storage system records and answer questions concerning the installer's certification and compliance with the ~~Division's~~ Department's ignition interlock program requirements.

~~I.~~**J.** Before issuing certification, the ~~Division~~ Department may perform an onsite ~~evaluation~~ inspection of a service center to verify compliance with this Article.

~~J.~~**K.** After verifying compliance with subsections (A) through (G), the ~~Division~~ Department shall ~~issue a certificate~~ provide evidence of approval to the installer ~~and each service center~~ that shall remain valid until cancelled by the ~~Division~~ Department or terminated by the installer or service center. ~~Issuance of a certificate~~ Evidence of approval provided to an installer or service center under this Section ~~shall be evidence~~ demonstrates that the installer's service center has met all of the criteria necessary for approval ~~and certification~~ by the ~~Division~~ Department.

~~K.~~**L.** ~~Certification~~ Approval of the installer's service center is contingent ~~upon~~ on the installer's agreement to conform with and abide by all directives, orders, and policies issued by the ~~Division~~ Department regarding any service center activities regulated by the ~~Division~~ Department under this Article and A.R.S. Title 28, Chapter 4, Article 5, which may include:

1. Program administration,
2. Reports,
3. Records and forms,
4. Inspections,
5. Methods of operations and testing protocol,
6. Personnel training and qualifications,
7. Criminal history considerations for installer-certified service representatives, and
8. Records custodian.

~~L.~~**M.** Certification of an installer issued under this ~~Section~~ Article may be cancelled by the ~~Division~~ Department if the ~~installer~~ installer's~~,~~ service center, or installer-certified service representative ~~violates or~~ is not in compliance with a provision of this Article, provisions regarding reporting in R17-5-610 and R17-5-601, or A.R.S. Title 28, Chapter 4, Article 5, or the certified ignition interlock device equipment it is authorized by the manufacturer to install no longer meets the requirements provided under Article 6 of this Chapter.

R17-5-708. ~~Cease and Desist~~ Notice; Denial or Cancellation of Certification; Appeal; Hearing

~~A. If the Director has reason to believe that a Division-certified installer or service center is operating in violation of a provision under this Article, or A.R.S. Title 28, Chapter 4, Article 5, the Director shall immediately issue and serve a cease and desist order on the installer or service center by personal delivery or by mail to its last known address.~~

~~1. On receipt of a cease and desist order, an installer or service center shall immediately take action as specified in the order or cease and desist from engaging in any further activity authorized under this Article or A.R.S. Title 28, Chapter 4, Article 5.~~

~~2. On failure of an installer or service center to comply with a cease and desist order, the Director shall issue an immediate cancellation of its installer or service center certification.~~

A. If the Department determines that an authorized reporting installer fails to properly report ignition interlock information and data to the Department in the manner prescribed in these rules, the Department may immediately provide written notice to the authorized reporting installer with the following information:

1. The name of the participant and the date of the improper reporting; and
2. The authorized reporting installer shall send the required record or report to the Department within ten business days, if applicable.

B. If the authorized reporting installer fails to remedy the issues identified in the notice provided under R17-5-708(A) within ten business days, the Department may cancel the authorized reporting installer's certification.

~~B.~~**C.** ~~Appeal of a denial of application or cancellation of certification.~~ If the ~~Division~~ Department denies a pending application for certification~~,~~ or recertification of an installer, or cancels a certification previously issued to an installer~~, or its service center,~~ the installer ~~or service center~~ may appeal the action as follows:

1. Within 15 days after receipt of a notice of denial of application or a notice of cancellation of certification~~,~~ or a notice of denial of recertification of an installer, the installer ~~or service center~~ may file a written request for a hearing on the issue of the denial or cancellation with ~~Division's~~ the Department's Executive Hearing Office as prescribed under 17 A.A.C. 1, Article 5.
2. If a hearing on the issue of the denial or cancellation is timely requested, the ~~Division's~~ Department's Executive Hearing Office shall conduct the hearing as prescribed under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5. The request for a hearing stays the summary cancellation of an ~~installer or service center's~~ installer's certified activities.
3. Within 10 days after a hearing, the ~~Hearing Officer~~ hearing officer shall issue to the installer ~~or service center~~ a written decision, which shall:
   a. Provide findings of fact and conclusions of law; and
   b. Grant the application, deny the application, deny recertification, or cancel the certification.

4. If the ~~Hearing Officer~~ hearing officer affirms the denial of application or recertification or cancellation of certification, the installer ~~or service center~~ may seek judicial review under A.R.S. Title 12, Chapter 7, Article 6, within ~~30~~ 35 days ~~from~~ of the date ~~of the decision and order~~ when a copy of the decision sought to be reviewed is served upon the party affected unless the court grants a stay pending the outcome of judicial review. ~~The denial of application or order of cancellation shall not be suspended during pendency of an appeal.~~

~~**C.** After denial of an application, or cancellation of a certification, an installer or service center may reapply to the Division for a new certification by completing a new application and meeting all certification requirements under this Article. A cancellation does not prohibit a manufacturer, installer, or service center from submitting a subsequent application for certification if all certification requirements are met.~~

D. If an installer's certification is cancelled or denied, or recertification is denied, the installer is prohibited from performing its duties and operating under these rules for a period of one year from the latest of the following dates when:

1. The Department denies an application or recertification, or cancels a certification of an installer, or
2. The Department's Executive Hearing Office denies the application or recertification, or cancels a certification of an installer.

E. After the one-year decertification period ends, an installer may reapply to the Department for certification by completing a new application and meeting all certification requirements under this Article.