NOTICE OF EMERGENCY RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES

HEALTH CARE INSTITUTIONS: LICENSING

PREAMBLE

1. **Sections Affected**
   - R9-10-121

2. **Rulemaking Action**
   - New Section

3. **Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
   - Implementing statutes: A.R.S. §§ 36-132(A)(17), 36-136(I)(1), 36-405(A)

4. **The Effective Date of the rule:**
   - The rule will take effect upon the filing of the Approval of Emergency Rulemaking and the Notice of Emergency Rulemaking with the Office of the Secretary of State by the Office of the Attorney General. An exception from the effective date provisions in A.R.S. § 41-1032(A) is necessary to preserve public health by immediately addressing the impending coronavirus epidemic in Arizona, as described in the Declaration of Emergency – COVID-19, issued on March 11, 2020, and required by Executive Order 2020-07.

5. **Citations to all related emergency rulemaking notices published in the Register as specified in R1-1-409(A) that pertain to the record of this notice of emergency rulemaking:**
   - None

6. **The agency's contact person who can answer questions about the rulemaking:**
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   - Public Health Licensing Services
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   or

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 **An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

   Over the past three months, COVID-19, the disease caused by novel coronavirus, SARS-CoV-2, has spread to all parts of the globe, and community spread is increasing. On March 11, 2020, the World Health Organization officially declared a pandemic due to COVID-19, with 124,908 total confirmed cases and 4,591 deaths. Over 1,000 cases have been confirmed in the United States. Most at risk for serious morbidity and increased mortality due to the disease are the elderly and those with complicating medical conditions. As of March 11, 2020, nine cases of COVID-19 have been confirmed in Arizona. To address this public health emergency, the Governor has declared that a State of Emergency exists in Arizona due to the COVID-19 outbreak and issued Executive Order 2020-07, which directs the Arizona Department of Health Services (Department) to conduct emergency rulemaking to adopt requirements designed to prevent the spread of COVID-19 to vulnerable Arizonans residing in nursing care institutions, intermediate care facilities, or assisted living facilities.

   To accomplish this and in compliance with the Governor’s directive in the Executive Order 2020-07 and the Declaration of Emergency, the Department sought and obtained an exception from the rulemaking moratorium to conduct emergency rulemaking related to establishing requirements designed to protect vulnerable individuals in nursing care institutions, intermediate care facilities, and assisted living facilities from exposure to COVID-19. The Department is adopting these requirements in A.A.C. Title 9, Chapter 10, Health Care Institutions. In this emergency rulemaking, the Department is adopting requirements for establishing, documenting, and implementing policies and procedures to help prevent exposure to the virus and the spread of COVID-19 in these health care institutions. These include policies and procedures to require screening and triage of personnel members, employees, visitors, and any other individuals entering the facility. The Department is also specifying requirements for disinfection of frequently touched surfaces and for distancing residents who exhibit symptoms of COVID-19 from other residents.
The number of cases of COVID-19 and related deaths is expected to increase, causing concern at all levels. The measures designated in these rules are designed to reduce exposure of these residents to SARS-CoV-2 and the concomitant incidence of COVID-19. By providing licensed healthcare institutions with comprehensive requirements related to reducing the chance of exposure, the Department anticipates an immediate effect on the spread of the virus and a decrease in the number of deaths.

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:

The Department did not review or rely on any study related to this rulemaking package.

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:

Not applicable. Pursuant to A.R.S. § 41-1055(D)(1), this rulemaking is exempt from the requirements to prepare and file an economic, small business, and consumer impact statement.

10. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include but are not limited to:

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:

The rule is not more stringent than federal law.

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:

No analysis comparing competitiveness was received by the Department.

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

None
12. An agency explanation about the situation justifying the rulemaking as an emergency rule: COVID-19 is a serious, novel disease that can result in death, especially for those who are most at risk. The number of COVID-19 cases and related deaths is expected to increase, requiring immediate action to minimize the impact as much as possible. Nursing care institutions, intermediate care facilities, and assisted living facilities treat and house populations most at risk if they were to contract COVID-19. To reduce the number of COVID-19 cases and related deaths among residents of nursing care institutions, intermediate care facilities, and assisted living facilities, the Department needs to take immediate action to prevent the spread of COVID-19 at these facilities. These measures are designed to reduce exposure of these residents to the coronavirus and the concomitant incidence of COVID-19. Therefore, they are necessary to prevent loss of life, the most compelling justification for conducting this emergency rulemaking. The emergency situation created by COVID-19, and thus the need for emergency rules, was not created due to the Department's inaction and is not something that may be averted by timely compliance with the notice and public participation provisions of A.R.S. Title 41, Chapter 6. Accordingly, in light of the human and economic costs posed by the COVID-19 epidemic, the Department submits that an emergency rulemaking is both justified and proper.

13. The date the Attorney General approved the rule:

14. The full text of the rules follows:
ARTICLE 1. GENERAL

Section
R9-10-121. Disease Prevention and Control
ARTICLE 1. GENERAL

R9-10-121. Disease Prevention and Control

A. This Section applies to health care institutions licensed under Article 4, 5, or 8 of this Chapter.

B. The following definitions apply in this Section:

1. "Communicable disease" has the same meaning as in A.A.C. R9-6-101.
2. "Infection" has the same meaning as in A.A.C. R9-6-101.
3. "Respiratory symptoms" means coughing, shortness of breath, or wheezing, with acute onset, not known to be caused by asthma, allergies, or another chronic disease.

C. An administrator or manager, as applicable, shall ensure that policies and procedures are established, documented, and implemented, to protect the health and safety of a resident, that:

1. Cover screening and triage before entry of personnel members, employees, visitors, and any other individuals;
2. Cover the manner and frequency of assessing residents to determine a change in a resident's medical condition;
3. Establish disinfection protocols and schedules for frequently touched surfaces; and
4. Specify requirements for distancing residents who exhibit symptoms of a communicable disease from other residents to reduce the chance for infection of another individual.

D. An administrator or manager, as applicable, shall ensure that:

1. Before entering the facility, each individual, including a personnel member, employee, or visitor, is screened for fever or respiratory symptoms indicative of a communicable disease;
2. If an individual refuses to be screened, the individual is excluded from entry to the facility;
3. If an individual is determined to have a fever or respiratory symptoms, the individual is excluded from entry to the facility until symptoms have resolved or the individual has been evaluated and cleared by a medical practitioner;
4. If an individual, other than a resident, develops a fever or respiratory symptoms while in the facility, the individual is required to leave the facility and not return until symptoms have resolved or the individual has been evaluated and cleared by a medical practitioner; and
5. If insufficient personnel members are available to meet the needs of all residents in the facility, the administrator or manager, as applicable, implements the disaster plan.
required in R9-10-424, R9-10-523, or R9-10-818, as applicable, which may include moving a resident to a different facility.

F. An administrator or manager, as applicable, shall ensure that:

1. An assessment of a resident includes whether the resident has a fever or respiratory symptoms indicative of a communicable disease and is documented in the resident’s medical record; and

2. If a resident is found to have a fever or respiratory symptoms indicative of a communicable disease:
   a. The resident is evaluated by a medical practitioner within 24 hours to determine what services need to be provided to the resident and what precautions need to be taken by the facility, and the evaluation is documented in the resident’s medical record;
   b. To reduce the chance for infection of another individual, the resident is:
      i. Kept at a distance of at least six feet from other residents; or
      ii. If not possible to keep the resident at a distance from other residents, required to wear a facemask;
   c. A personnel member:
      i. Takes precautions, which may include the use of gloves and a facemask or other personal protection equipment, while providing services to the resident; and
      ii. Removes and, if applicable, disposes of the personal protection equipment and washes the personnel member’s hands with soap and water for at least 20 seconds or, if soap and water are not available, uses a hand sanitizer containing at least 60% alcohol immediately after providing services to the resident and before providing services to another resident;
   d. Linens, dishes, utensils, and other items used by the resident are:
      i. Kept separate from similar items used by a resident who does not have a fever or respiratory symptoms indicative of a communicable disease, and
      ii. Disinfected or disposed of in a manner to reduce the chance for infection of another individual; and
   e. Surfaces touched by the resident are disinfected before another individual touches the surface.
An administrator or manager, as applicable, shall ensure that door handles, tables, chair backs and arm rests, light switches, and other frequently touched surfaces are cleaned and disinfected, according to policies and procedures, with:

1. An alcohol solution containing at least 70% alcohol;
2. A bleach solution containing four teaspoons of bleach per quart of water; or
3. An EPA-approved household disinfectant specified in the list, which is incorporated by reference, and available at https://www.epa.gov/sites/production/files/2020-03/documents/sars-cov-2-list_03-03-2020.pdf, and does not include any later amendments or editions.