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26 **ARTICLE 21. DIVISION PROCUREMENT AND RATE**

27 **SETTING – QUALIFIED VENDORS**

28 **R6-6-2101. Definitions**

29 The following definitions apply to this Article:

- 30 1. “Agreement file” means the public, documented record of procurement  
31 transactions that is maintained by and available at the Division contracts  
32 management office.
- 33 2. “AHCCCS” means the Arizona Health Care Cost Containment System as  
34 established by A.R.S. § 36-2901 et seq.
- 35 3. “Application” means the Qualified Vendor application, including any  
36 amendments, supplements, or updates submitted by the applicant.
- 37 4. “Assistant Director” means the Assistant Director of the Department of Economic  
38 Security, Division of Developmental Disabilities.
- 39 5. “Authorization” means the approval by the Division or its designee identifying  
40 the type and number of units of service a Qualified Vendor is authorized to  
41 provide to a specific consumer.
- 42 6. “Community developmental disability services” means any service or support the  
43 Division is authorized to purchase under A.R.S. § 36-557 on behalf of individuals  
44 with developmental disabilities and their families or guardians.
- 45 7. “Conflict of interest” means that a Qualified Vendor applicant, a Qualified  
46 Vendor, or an officer or employee of a Qualified Vendor applicant or Qualified  
47 Vendor has a relative as defined in A.R.S. § 38-502 who is an employee of the  
48 Division with direct or indirect responsibility for purchasing, authorizing,

- 49 monitoring or evaluating community developmental disability services or  
50 vendors.
- 51 8. “Consumer” means an individual authorized to receive community developmental  
52 disability services from the Division.
- 53 9. “Consumer and family choice” means the consumer’s or consumer’s  
54 representative’s expressed preference to receive services from a specific provider.
- 55 10. “Contract list” means a roster of agencies, organizations, and professional  
56 independent providers who, on January 1, 2003 have a valid contract or  
57 agreement with the Division to provide community developmental disability  
58 services.
- 59 11. “Day” means calendar day unless otherwise specified.
- 60 12. “Department” means the Arizona Department of Economic Security.
- 61 13. “Department procurement officer” means the person, or his or her designee,  
62 authorized by the Department to make written determinations with respect to  
63 purchasing processes or agreements authorized under A.R.S. § 36-557.
- 64 14. “Division” means the Division of Developmental Disabilities of the Department  
65 of Economic Security.
- 66 15. “Division web site” means the Division of Developmental Disabilities internet  
67 web site.
- 68 16. “Emergency need” means a situation that requires an immediate change in  
69 services, in service providers, or in both services and service providers, and is  
70 necessary for the health or safety of the consumer.

- 71 17. “Independent assessment” means a review by a third party of an authorization  
72 decision.
- 73 18. “Independent rate model” means a methodology for rate development that  
74 includes the definition of the cost components and assumptions used in the  
75 development of a reimbursement rate.
- 76 19. “Individual Independent Provider” means a person who is qualified to provide  
77 service, has a provider identification number and an individual service agreement  
78 or a qualified vendor agreement with the Division to provide community  
79 developmental disability services.
- 80 20. “Individual service agreement” means the legally binding contract between the  
81 Division and an individual independent provider to provide community  
82 developmental disability services.
- 83 21. “Individual support plan” or “ISP” means a written statement of services to be  
84 provided to an individual with developmental disabilities including habilitation  
85 goals and objectives and a listing of the services, if any, the consumer is  
86 authorized to receive. The ISP incorporates and replaces the Individual Program  
87 Plan, the placement evaluation, the individualized service program plan and the  
88 service program plan used in A.R.S. § 36-557, and for the purposes of these rules  
89 incorporates the Individual Family Service Plan (IFSP) as defined in Section  
90 809.1 of the Division of Developmental Disabilities Policy and Procedures  
91 Manual.
- 92 22. “Individual support plan team” or “ISP Team” means a group of persons  
93 including the consumer, the consumer’s representative, and other persons selected

94 by the consumer, assembled by the Division and coordinated by the consumer's  
95 support coordinator in compliance with A.R.S. §§ 36-551 and 36-560 to develop  
96 the consumer's individual support plan.

97 23. "Itemized service budget" means a description of the cost of services and includes  
98 documentation that results in a defined unit rate.

99 24. "List serv" means an electronic mailing list maintained by the Division for  
100 purposes of sending information via electronic mail to a predefined directory of  
101 intended recipients.

102 25. "Negotiated rate" means the amount per unit of service a provider will be paid for  
103 services rendered based on successful negotiation of a price with the Division.

104 26. "Network development plan" means the annual plan developed by the Division  
105 that identifies the services and supports anticipated to be needed by consumers  
106 throughout the state.

107 27. "Non-identifying information" means a description that does not provide  
108 information that could lead the recipient of the information to recognize a  
109 consumer.

110 28. "Notice of Protest" means a written document signed by the protester and  
111 submitted to the Department procurement officer to protest a procurement process  
112 or decision under this Article.

113 29. "Open and continuous process" means that responses to a Request for Qualified  
114 Vendor Applications may be submitted by an applicant to the Division at any time  
115 during the time period the Request is posted to the Division web site and  
116 identified as being open.

- 117 30. “Personal financial statement” means documentation of the applicant’s financial  
118 status for the past three years as represented by copies of federal income tax  
119 statements, an accountant’s statement of assets and liabilities or other similar  
120 documentation of financial status.
- 121 31. “Professional Independent Provider” means a person who is licensed or certified  
122 under Title 32, Arizona Revised Statutes, who provides services for consumers as  
123 a Qualified Vendor and is not an employee or subcontractor of a provider agency.
- 124 32. “Program plan” means a response to a requirement specified in the Qualified  
125 Vendor application that identifies the services to be provided and the service  
126 specific methodology to be followed by the applicant.
- 127 33. “Provider” means a Qualified Vendor or an Individual Independent Provider.
- 128 34. “Provider organization” means a corporation, professional corporation,  
129 partnership, limited liability company, or joint venture that is or applies to be a  
130 Qualified Vendor.
- 131 35. “Published rate” means the payment amount per unit of service established by the  
132 Division for the purchase of a community developmental disability service.
- 133 36. “Qualified Vendor” means a provider of community developmental disability  
134 services that has applied for Qualified Vendor status, meets the criteria for  
135 Qualified Vendor status, and has entered into a Qualified Vendor Agreement with  
136 the Division.
- 137 37. “Qualified Vendor Agreement” means the legal, binding document between the  
138 Division and a Qualified Vendor describing the services the Qualified Vendor is  
139 qualified to provide and the terms and conditions governing the relationship

- 140 between the Division and the Qualified Vendor including any amendments,  
141 attachments, schedules, or exhibits.
- 142 38. “Qualified vendor list” means the roster of vendors who have entered into  
143 Qualified Vendor Agreements with the Division.
- 144 39. “Quality management plan” means the procedures used to monitor service and  
145 system performance and to define and implement actions that will result in service  
146 and system improvements.
- 147 40. “Request for Problem Solving” means a written document, signed by the protester  
148 and submitted to the Division to protest a procurement process or decision under  
149 this Article that requests informal problem solving actions be taken by the  
150 Division.
- 151 41. “Request for Qualified Vendor Applications” means a notice issued by the  
152 Division requesting vendors to apply to be Qualified Vendors for the delivery of  
153 community developmental disability services.
- 154 42. “Vendor Call for Services” means a notice from the Division inviting Qualified  
155 Vendors and individual independent providers to submit a response indicating  
156 their availability to provide services for a specific consumer or specific group of  
157 consumers, based on the requirements defined in the consumer’s ISP.
- 158 43. “Vendor Call Response” means a response to a Vendor Call for Services that  
159 indicates the provider’s availability to provide the requested service or services  
160 and describes how the provider proposes to meet the special accommodations  
161 needed for a specific consumer or specific group of consumers, based on the  
162 consumer’s ISP.

163 44. “Title XIX” means that section of the federal Social Security Act that authorizes  
164 the provision of Medicaid services including acute care and long-term care  
165 services.

166

167 **R6-6-2102. Applicability**

168 **A.** This Article shall apply to services purchased by the Division under the authority of  
169 A.R.S. § 36-557 and to reimbursement rates established by the Division under the  
170 authority of A.R.S § 36-2959. This Article does not apply to services purchased by the  
171 Division under the Arizona Procurement Code, A.R.S. Title 41, Chapter 23.

172 **B.** Under this Article, the Division may:

- 173 1. Enter into Qualified Vendor Agreements for the delivery of statewide community  
174 developmental disability services;
- 175 2. Amend Qualified Vendor Agreements in accordance with these rules;
- 176 3. Establish, review, and update reimbursement rates for the purchase of services for  
177 persons with developmental disabilities in the Arizona long-term care system and  
178 the state only program;
- 179 4. Purchase community developmental disability services from provider  
180 organizations, Professional Independent Providers and Individual Independent  
181 Providers who have submitted a Qualified Vendor application, have become  
182 qualified as a vendor and have signed a Qualified Vendor Agreement or an  
183 Individual Service Agreement with the Division;
- 184 5. Create a list of Qualified Vendors based on applications received that meet the  
185 criteria defined at R6-6-2104;

- 186 6. Reimburse a Qualified Vendor for the provision of community developmental  
187 disability services based on published rates or negotiated rates;
- 188 a. The Division shall determine if the reimbursement methodology will be  
189 published rate or negotiated rate for each service purchased.
- 190 b. The Division shall use only one reimbursement methodology per service.
- 191 7. Issue an authorization to a Qualified Vendor who has been selected to provide the  
192 service for a specific consumer;
- 193 8. Establish a process for the consumer or the consumer's representative to select a  
194 provider from a list of Qualified Vendors or Individual Independent Providers;  
195 and
- 196 9. Maintain an open and continuous process of accepting applications to become a  
197 Qualified Vendor.
- 198 C. A Professional Independent Provider shall become a Qualified Vendor in order to provide  
199 community developmental disability services for the Division.
- 200 D. An Individual Independent Provider may become a Qualified Vendor but is not required  
201 to become a Qualified Vendor in order to provide community developmental disability  
202 services under an agreement with the Division.

203

204 **R6-6-2103. Qualified Vendor Application Process**

- 205 A. The Division shall post the following information on the Division web site:
- 206 1. All Requests for Qualified Vendor Applications;
- 207 2. A description of the Division's anticipated service needs;

- 208 3. The Qualified Vendor application form or forms, if any, including a description of  
209 the information and documents that must be submitted by an applicant to  
210 complete the application, and any assurances, representations or warranties that  
211 must be made by an applicant;
- 212 4. Instructions for completing the application as described in subsection (D);
- 213 5. The Qualified Vendor Agreement, including all terms and conditions,  
214 amendments, schedules and attachments; and
- 215 6. Any other information reasonably necessary to advise an applicant of application  
216 requirements, as deemed necessary by the Division to evaluate the applications.
- 217 **B.** The Division may send written or electronic notice of the Request for Qualified Vendor  
218 Applications to all providers on the Division's contract list, Qualified Vendor List and  
219 any party not on the contract list who has notified the Division business office in writing  
220 that it wishes to receive notification.
- 221 **C.** Providers and other interested parties are responsible for making themselves aware of the  
222 opportunities posted to the Division web site.
- 223 **D.** The Division shall include the following instructions and information as part of the  
224 Request for Qualified Vendor Applications:
- 225 1. The acceptable methods for transmitting the application to the Division, such as e-  
226 mail, fax, or mail delivery;
- 227 2. The due date, if any, for applications to be considered by the Division;
- 228 3. The street address, mailing address, e-mail address and facsimile number of the  
229 Division office to which applications are to be sent;

- 230 4. The term of the Qualified Vendor Agreement and the renewal options as  
231 established by the Division;
- 232 5. A description of the service or services for which Qualified Vendors are  
233 requested, including the covered populations, the service need by geographic area,  
234 service specifications, a delivery or performance schedule and any other  
235 information that the Division finds necessary or appropriate;
- 236 6. Whether the payment for each service will be a negotiated rate or a published rate;
- 237 7. The published rate tables as appropriate to the services requested in the Request  
238 for Qualified Vendor Applications;
- 239 8. A description of the factors to be used in the evaluation of the application;
- 240 9. The location and method for obtaining documents that are incorporated by  
241 reference in the Request for Qualified Vendor Applications including, as  
242 applicable, the Division internet address;
- 243 10. The requirement that the applicant acknowledge receipt of all amendments to the  
244 Request for Qualified Vendor Applications issued by the Division; and
- 245 11. A description of the minimum information that an applicant must submit.
- 246 **E.** The Division shall advise each Qualified Vendor applicant in writing whether the  
247 application is complete within 30 days of receipt of the application and shall identify the  
248 information or documentation that is missing or incomplete in the application.
- 249 1. The Division may conduct discussions with applicants to provide information  
250 about the completeness of the application and the information needed to make the  
251 application complete.

252 2. The Division shall specify the time-frame in which the applicant must provide the  
253 missing information.

254 3. The Division shall deny the application if the applicant does not provide the  
255 additional information within the time-frame defined by the Division.

256 **F.** The Division shall notify a Qualified Vendor applicant in writing whether the applicant  
257 has been accepted as a Qualified Vendor within 60 days of receipt of a complete  
258 application.

259 **G.** For negotiated rate agreements, the Division may extend the 60 day time-frame defined at  
260 R6-6-2103(F).

261 **H.** The Division shall evaluate applications for Qualified Vendor Agreements based upon  
262 the criteria defined at R6-6-2104.

263 **I.** The Division shall accord all applicants the same opportunity for discussion of the  
264 application completeness and revision to the application information.

265

266 **R6-6-2104. Criteria for Qualified Vendor Agreements**

267 **A.** To obtain a Qualified Vendor Agreement, an applicant shall submit a complete  
268 application to the Division that includes:

269 1. Identification of the services the applicant proposes to provide;

270 2. Identification of current and proposed locations at which service, administrative,  
271 or monitoring activities are conducted;

272 3. A description of staff qualifications if requested by the Division in the Request for  
273 Qualified Vendor Applications;

- 274 4. Corporate structure demonstrating ownership and corporate affiliations, if  
275 applicable;
- 276 5. A program plan to be included in the Directory of Qualified Vendors in a format  
277 prescribed by the Division;
- 278 6. Assurance that the applicant:
- 279 a. Holds the appropriate current Arizona license or certification to provide  
280 developmental disability services, and
- 281 b. That the license or certification is in good standing with the licensing or  
282 certification organization, or
- 283 c. Will possess the appropriate license or certification by the time of  
284 authorization of service;
- 285 7. A description of the applicant's quality management plan;
- 286 8. A declaration of any potential conflict of interest with any Division employee;
- 287 9. Assurances required by the Division as part of the application and documentation  
288 to support such assurances, if specifically requested by the Division in the  
289 Request for Qualified Vendor Applications;
- 290 10. Certification that the submission of the application does not involve collusion or  
291 other anti-competitive practice; and
- 292 11. Documentation of financial stability, including:
- 293 a. For a Qualified Vendor Agreement for services requiring a negotiated rate,  
294 the applicant shall submit a program budget and a proposed rate. The  
295 program budget information shall include:
- 296 i. An itemized service budget in a format prescribed by the Division;

- 307                   ii.     An income statement or statement of revenue by fund source for  
308                   the applicant's current fiscal year to date and for each of the  
309                   previous three fiscal years;
- 310                   iii.    A statement of expenditures by fund source for the applicant's  
311                   current fiscal year to date and for each of the previous three fiscal  
312                   years; and
- 313                   iv.    An audited financial statement or a financial audit for the prior  
314                   fiscal year, if available.
- 315                   b.     For a Qualified Vendor Agreement for services that have a published rate,  
316                   the applicant shall submit its audited financial statement for the prior year.  
317                   In the absence of an audited financial statement, the applicant may submit  
318                   quarterly financial statements for the prior year, including revenues and  
319                   expenditures.
- 320                   c.     Applicants who do not have an audited financial statement or quarterly  
321                   financial statements shall submit a personal financial statement of the  
322                   Director or Chief Executive Officer or if a corporation, the corporate  
323                   business plan.
- 324                   d.     A newly formed corporation shall submit the corporate business plan and  
325                   personal financial statements of the Director or Chief Executive Officer.
- 326                   e.     Additional financial information may be required by the Request for  
327                   Qualified Vendor Applications.
- 328     **B.**     The Division shall consider the following factors in determining if an applicant is a  
329     Qualified Vendor and eligible to enter into a Qualified Vendor Agreement:

- 320 1. Ability of the applicant to meet the need for services based on performance,  
321 including compliance with licensing and certification requirements; program  
322 monitoring, agreement monitoring, or contract monitoring reports; and corporate  
323 or individual experience providing community developmental disability services  
324 or similar services in Arizona and in other states;
- 325 2. Whether the applicant has met the requirements of the Qualified Vendor  
326 application process;
- 327 3. Whether the application is consistent with the Division’s network development  
328 plan or other documentation of projected service need;
- 329 4. Financial stability of the applicant as demonstrated by the financial information  
330 provided in the application;
- 331 5. The rate proposal for a negotiated rate agreement; and
- 332 6. Any other criteria deemed relevant by the Division and included as part of the  
333 Request for Qualified Vendor Applications.
- 334 C. The Division shall document the results of its evaluation of the applications in the  
335 Division agreement file.

336

337 **R6-6-2105. Qualified Vendor Agreement**

- 338 A. The Division shall enter into Qualified Vendor Agreements with an applicant that:
- 339 1. Meets the requirements defined of R6-6-2104,
- 340 2. Accepts the published rate or agreed upon negotiated rate, and

- 341 3. Accepts the terms and conditions of the Qualified Vendor Agreement as defined  
342 by the Division in the Request for Qualified Vendor Applications and any  
343 amendments to the Request for Qualified Vendor Applications.
- 344 **B.** The Division shall enter into only one Qualified Vendor Agreement per applicant, which  
345 may be amended as needed.
- 346 **C.** The Division shall specify in the Qualified Vendor Agreement what information updates  
347 to the application will require an agreement amendment.
- 348 **D.** A Qualified Vendor shall update the assurances, financial information, conflict of interest  
349 statement, and other information provided in the application when there is a change or at  
350 the request of the Division.
- 351 **E.** A Qualified Vendor may update the Qualified Vendor’s program plan at any time to  
352 reflect a change in services, methodology or locations of service delivery, for inclusion in  
353 the Qualified Vendor Directory. The Division shall review all changes submitted by the  
354 Qualified Vendor for consistency with the Qualified Vendor Agreement.
- 355 **F.** If the Division finds that information provided in the original application or as an update  
356 to the application is materially inaccurate, and the Qualified Vendor fails to correct such  
357 information within the time specified in a notice from the Division, such failure may be  
358 cause for termination of the Qualified Vendor Agreement in whole or in part. The  
359 Division may remove the information from the Qualified Vendor Directory until a  
360 correction is provided or the Qualified Vendor Agreement is terminated.
- 361 **G.** A Qualified Vendor may submit an amended application to request that additional  
362 services be added to the Qualified Vendor Agreement at any time a service is posted to  
363 the Division web site as an open and continuous Request for Qualified Vendor

364 Applications. The Division shall respond to a request for an amendment to Qualified  
365 Vendor Agreements based on the criteria defined at R6-6-2103 and R6-6-2104.

366 **H.** Prior to the effective date of the Qualified Vendor Agreement, the Division shall not  
367 disclose any information identified by the applicant as confidential business information  
368 or proprietary information without first notifying the applicant in writing and allowing  
369 the applicant opportunity to respond or protest the planned disclosure.

370

371 **R6-6-2106. List Serv**

372 **A.** The Division shall maintain a list serv as one means of providing information and notices  
373 to providers of service and interested parties.

374 **B.** The Division shall include on the Division list serv the contact information for all  
375 Qualified Vendors.

376 **C.** The Division list serve contact information for Qualified Vendors shall include:

- 377 1. Name of the Qualified Vendor,  
378 2. Name of the contact person for each Qualified Vendor,  
379 3. Telephone number, and  
380 4. E-mail address.

381 **D.** A Qualified Vendor shall be responsible for notifying the Division business office of any  
382 change in the contact information.

383

384 **R6-6-2107. Selecting a Provider – Individual Consumers**

- 385 **A.** A consumer or the consumer’s representative shall select providers of service from the  
386 Qualified Vendor Directory and Individual Independent Provider list or by requesting  
387 that the Division post to its web site a Vendor Call for Services.
- 388 **B.** The Department shall provide a consumer or the consumer’s representative with an  
389 opportunity to select a provider at any time that:
- 390 1. A consumer who is new to the service system is seeking a provider,
  - 391 2. There is a change in provider requested in the ISP at the time of the annual ISP  
392 review,
  - 393 3. The consumer’s needs change and the current provider or providers are no longer  
394 able to meet the consumer’s needs,
  - 395 4. The consumer or the consumer’s representative requests a change pursuant to R6-  
396 6-2109(C), or
  - 397 5. The current provider is unable or unwilling to continue to meet the needs of the  
398 consumer.
- 399 **C.** The Division shall confirm that the program plan for the provider selected from the  
400 Qualified Vendor Directory or Independent Individual Provider list will meet the needs of  
401 the consumer as defined in the consumer’s ISP.
- 402 **D.** For providers to be selected through the Vendor Call for Services process, the Division  
403 shall post a Vendor Call for Services to the Division’s web site that includes a list of the  
404 service needs of a consumer based on the consumer’s ISP, identification of any special  
405 accommodations needed by the consumer or specific group of consumers and the  
406 consumer’s desired time-frame for delivery of the services.

- 407 **E.** The Division shall notify Qualified Vendors and Individual Independent Providers via the  
408 list serv when the consumer or the consumer’s representative have requested that the  
409 Vendor Call for Services process be used to identify potential providers and the Vendor  
410 Call for Services has been posted to the Division’s web site.
- 411 **F.** The Division shall include only individual consumer non-identifying information in the  
412 Vendor Call for Services.
- 413 **G.** A Qualified Vendor shall submit to the Division, within the time-frame indicated in the  
414 Vendor Call for Services, a Vendor Call Response indicating the Qualified Vendor’s  
415 availability to provide the needed service or services, a description of how the Qualified  
416 Vendor would meet the special accommodations described in the Vendor Call for  
417 Services, and any other information described in the Vendor Call for Services to select a  
418 provider of service.
- 419 **H.** The Division shall review and evaluate the Vendor Call Responses and identify those  
420 responses that meet the needs described in the consumer’s ISP.
- 421 **I.** The Division shall notify the responding Qualified Vendors within 14 days after the due  
422 date for Vendor Call Responses as to whether the response meets the needs of the  
423 consumer.
- 424 **J.** The Division shall provide the consumer and the consumer’s representative with a list of  
425 those providers that, based on the Vendor Call Response submitted, can meet the needs of  
426 the consumer.
- 427 **K.** The consumer or the consumer’s representative shall select any Qualified Vendors from  
428 the list provided by the Division or may select an Individual Independent Provider.

- 429 **L.** If a consumer or the consumer’s representative refuses or fails to select a Qualified  
430 Vendor from the list, the Division shall make the selection based on a random automatic  
431 assignment methodology. The Division shall include the following criteria in the  
432 automatic assignment process:
- 433 1. Continuity of care,
  - 434 2. Least disruption to established daily routines of the consumer, and
  - 435 3. Least disruption to the consumer’s receipt of other services and supports.
- 436 **M.** Before a final selection, the Division may require Qualified Vendors to meet with the  
437 consumer or the consumer’s representative. The Division shall provide a minimum of 48  
438 hours notice when scheduling the meeting.
- 439 **N.** A Qualified Vendor may withdraw its response to a Vendor Call for Services anytime  
440 prior to the consumer, the consumer’s representative or the Division selecting a Qualified  
441 Vendor.
- 442 **O.** Once a consumer, the consumer’s representative or the Division has selected a Qualified  
443 Vendor, the Qualified Vendor may not refuse to provide the authorized services for the  
444 consumer based on the difficulty of supports needed by the consumer.
- 445 **P.** If the Qualified Vendor determines, subsequent to its selection, that it cannot meet the  
446 consumer’s needs, the Qualified Vendor may request an informal review by the Division.
- 447 1. The party requesting a review shall submit a written request to the Division  
448 District Program Manager.
  - 449 2. The Division District Program Manager shall review the facts and provide the  
450 final decision in writing to the Qualified Vendor within 21 days of the request for  
451 a review from the Qualified Vendor.

- 452 3. If the District Program Manager rejects the Vendor's request, the District Program  
453 Manger shall provide the Qualified Vendor with the reason for the decision.
- 454 4. A Qualified Vendor who disagrees with the decision of the Division District  
455 Program Manager may file a grievance as provided by R6-6-1801 et seq. and R6-  
456 6-2201 et seq.

457

458 **R6-6-2108. Emergency Procurement**

- 459 **A.** The Division may obtain services on an emergency basis when it determines there is an  
460 immediate and serious need for services that cannot be met through the procurement  
461 process defined in this Article and the procurement is necessary for the preservation or  
462 protection of property or the health or safety of any person.
- 463 **B.** The Division shall limit an emergency procurement to those services necessary to meet  
464 the emergency need.
- 465 **C.** When the Division has determined that an emergency need exists, the Division shall:
- 466 1. Post to the Division web site an emergency Vendor Call for Services with an  
467 abbreviated time-frame for response from Qualified Vendors and send a notice  
468 through the list serv to Qualified Vendors;
- 469 2. If the Assistant Director determines that posting an emergency Vendor Call for  
470 Services is not in the best interest of the consumer, or that based upon the urgency  
471 of the need any competition would be impracticable, contact one or more  
472 Qualified Vendors to obtain a Vendor Call Response in order to identify a  
473 provider to meet the emergency need; or

474 3. If no Qualified Vendor is available, contact providers not on the Qualified Vendor  
475 list to request a Vendor Call Response in order to identify a provider to meet the  
476 emergency need.

477 **D.** The consumer, the consumer’s representative or the Division shall select a Qualified  
478 Vendor based on matching the Vendor Call Response to the needs of the consumer as  
479 defined in the ISP.

480

481 **R6-6-2109. Consumer Choice**

482 **A.** In support of a consumer-responsive service delivery system, the Division shall provide a  
483 consumer or the consumer’s representative the opportunity to express and document their  
484 interest in utilizing services from a specific Qualified Vendor or Individual Independent  
485 Provider through the ISP process.

486 **B.** At the annual review of the ISP, the consumer or the consumer’s representative may  
487 express a preference to utilize a different Qualified Vendor, without explanation. The  
488 Division shall accommodate the request to the extent appropriate and practical, as  
489 determined solely by the Division.

490 **C.** If the consumer or the consumer’s representative expresses a preference to utilize a  
491 different Qualified Vendor between annual reviews of the ISP, the consumer or the  
492 consumer’s representative must state in writing or must report to the support coordinator,  
493 for incorporation into ISP notes, the rationale for changing providers and a description of  
494 the opportunities given to the current Qualified Vendor to address the consumer’s  
495 concerns. The consumer may change Individual Independent Providers at any time.

496 **D.** The Division shall accommodate the requested change if the consumer and the current  
497 Qualified Vendor are unable to resolve the consumer's concerns, the change is  
498 reasonable, and another Qualified Vendor or Individual Independent Provider, identified  
499 through the Vendor Call for Services process or the consumer's or the consumer's  
500 representative's choice, indicates that it is available to provide services for the consumer.

501

502 **R6-6-2110. Authorization to Provide Services**

503 **A.** The Division shall issue authorizations to the Qualified Vendors selected by the  
504 consumer, the consumer's representative or the Division to provide the needed services.

505 **B.** The Division shall pay a Qualified Vendor based on the rates established in the Qualified  
506 Vendor Agreement and the units of service documented on the invoices submitted for  
507 valid authorizations issued for individual consumers.

508 **C.** The Division shall modify authorizations based on changes in the needs of consumers as  
509 documented in the ISP by the ISP Team and as applicable, approved by the Division.

510 **D.** The Division shall not provide reimbursement for services that have not been authorized  
511 except in an emergency situation, as determined by the Division.

512 **E.** A Qualified Vendor may provide short-term emergency services and, if the services are  
513 approved by the Division, the Division shall pay for the short-term emergency services.

514 1. The Qualified Vendor shall notify the Division of the emergency situation within  
515 one working day of implementing the emergency services.

516 2. The Division shall approve payment for emergency services for up to five days.

517 Upon verbal or written request from the Qualified Vendor, the District Program

518 Manager may approve an additional emergency period for up to 15 days. The

519 District Program Manager shall approve any extension of the emergency period in  
520 writing.

521 3. The Division shall review the consumer's needs through the ISP process and  
522 document as appropriate the revised authorization level.

523 **F.** A Qualified Vendors providing service may request an informal review by the Division  
524 of the number of units of service or type of services authorized for a specific consumer by  
525 submitting a written request for review to the Division District Program Manager.

526 1. The District Program Manager:

527 a. Shall conduct a review of the authorized units of service and issue a  
528 determination within 10 days of receipt of the request for review; or

529 b. May, at the sole discretion of the Division, arrange for an independent  
530 assessment of the service authorization by an external party selected from  
531 a list of independent assessors approved by the Division. The independent  
532 assessor shall review the service authorization and provide a written  
533 assessment to the District Program Manager within 30 days of the request  
534 for an assessment.

535 2. The District Program Manager shall issue a decision including the reasons for the  
536 decision within 10 days of receiving the independent assessment.

537

538 **R6-6-2111. Termination of the Qualified Vendor Agreement**

539 The Division shall terminate a Qualified Vendor Agreement and shall remove a provider from  
540 the Qualified Vendor List for any of the following reasons:

541 1. Upon request of the vendor,

- 542 2. When the Qualified Vendor Agreement has expired,
- 543 3. When a vendor no longer meets the criteria defined in the Request for Qualified
- 544 Vendor Applications,
- 545 4. For non-compliance with the Qualified Vendor Agreement requirements,
- 546 5. For failure to maintain a valid license, AHCCCS registration or Division
- 547 certification, as appropriate,
- 548 6. As determined by the Division after the Qualified Vendor has been given notice
- 549 and opportunity to be heard in accordance with R6-6-2115, or
- 550 7. For other reasons, such as lack of available funds.

551

552 **R6-6-2112. Cancellation of Requests and Notices**

553 **A.** The Assistant Director may cancel a Request for Qualified Vendor Applications or a

554 Vendor Call for Services in whole or in part if the Assistant Director determines that the

555 cancellation is in the state's best interest based on the following factors:

- 556 1. The availability of funding,
- 557 2. The inability to come to agreement with applicants,
- 558 3. A change in the need for services,
- 559 4. The potential for loss of federal funds,
- 560 5. A change in federal or state requirements that affect the service specified in the
- 561 Request for Qualified Vendor Applications or Qualified Vendor Agreement, or
- 562 6. Collusion or anti-competitive practices on the part of an applicant or Qualified
- 563 Vendor.

564 **B.** The Division shall document the reasons for the cancellation or rejection in the Division  
565 Agreement file.

566

567 **R6-6-2114. Rate Setting**

568 **A.** The Division may establish a rate structure for community developmental disability  
569 services, including the rate structure for provider organizations, professional independent  
570 providers and individual independent providers. Each fiscal year, the Division shall  
571 review the reimbursement rates for Arizona long-term care services and state only  
572 programs and may update the rate structure.

- 573 1. The Division shall contract with an independent consulting firm for an annual  
574 review of the adequacy and appropriateness of reimbursement rates to providers  
575 of community developmental disability services.
- 576 2. The Division shall complete a study of reimbursement rates for each community  
577 developmental disability service contracted for by the Division no less than once  
578 every five years.
- 579 3. The Division may require, and Qualified Vendors and Individual Independent  
580 Providers shall provide, financial data to the Division in the form and format  
581 prescribed by the Division to assist in the annual review. The Division shall seek  
582 provider recommendations regarding the form and format.
- 583 4. The Division shall annually establish a schedule that identifies which community  
584 developmental disability services will be reviewed for adequacy and  
585 appropriateness, and which community developmental disability services will be  
586 included in the rate reimbursement study.

- 587           5.     The Department shall determine if the independent consulting firm shall perform  
588                     one or more of the following activities to measure the adequacy and  
589                     appropriateness of the reimbursement rates:
- 590                 a.     Review the Department’s current rate structure,
  - 591                 b.     Conduct a provider cost survey,
  - 592                 c.     Compare the Department’s rates to rates for similar services used by other  
593                     state agencies, and
  - 594                 d.     Develop independent rate models for community developmental  
595                     disabilities services.
- 596           6.     The Assistant Director may consider evidence of the adequacy and  
597                     appropriateness of the Division’s reimbursement rates gathered from R6-6-  
598                     2114(5)(a) through (d), the rate study, or other relevant data sources to determine  
599                     whether a new rate needs to be created or an existing rate needs to be revised.
- 600           7.     After considering the evidence in the adequacy and appropriateness review, the  
601                     Assistant Director may establish a rate change for each service reviewed, based  
602                     on the availability of funds.
- 603           8.     After considering the evidence in the study of reimbursement rates and  
604                     independent rate models, the Assistant Director may propose a new rate.
- 605           9.     The Division shall provide public notice if rates for a community developmental  
606                     disability service are to be established or revised. The Division shall include in the  
607                     notice the proposed rate or rate change, the effective date of the rate change,  
608                     where those rates shall be available for review and, if a rate for a service is being  
609                     established for the first time, any phase-in schedule for the rate change.

- 610 10. The Division may provide a public comment period regarding the rate change.
- 611 11. The Assistant Director shall review any public comments received about the  
612 proposed rate, rate change or phase-in schedule, existing service history or current  
613 purchase of service information about the rates and any other information and  
614 may make adjustments to the proposed rate, rate change or phase-in schedule  
615 prior to finalizing the rate and the phase-in schedule.
- 616 12. The Division shall provide public notice of the final rates and phase-in schedule.
- 617 13. The Division shall adjust rates in accordance with legislatively mandated and  
618 appropriated increases or decreases.
- 619 14. The Division shall maintain rate schedules for providers of community  
620 developmental disability services at the central office of the Division for reference  
621 use during customary business hours.
- 622 **B.** When the rate for a service is established for the first time, the Assistant Director may  
623 implement the rate through a phase-in schedule not to exceed three years in duration.
- 624 1. When current rates are below the newly established rate, the Division may phase  
625 in the implementation of the new rates as follows:
- 626 a. In the first and second year of the new rate, providers may receive an  
627 incremental increase of the difference between their prior rate and the new  
628 rate;
- 629 b. In the third year, the providers shall receive the full rate.
- 630 2. When current rates are above the newly established rate, the Division may phase  
631 in the implementation of the new rates as follows:

- 632 a. In the first and second year of the new rate, providers may receive an  
633 incremental rate decrease from their prior rate to the new rate;
- 634 b. In the third year, the providers shall receive the new rate.
- 635 **C.** For a negotiated rate agreement, the Division may:
- 636 1. Hold discussions with any or all applicants regarding their offers;
- 637 2. Issue a written request for a final proposal revision to responsive applicants,  
638 which shall set forth the date, time, and place for the submission of the final  
639 proposal revision. If the applicant does not submit a notice of withdrawal or a  
640 final proposal revision in response to the Division's request, the Division shall use  
641 the applicant's most recent offer as the final proposal revision; and
- 642 3. Determine that an additional final proposal revision is needed.
- 643 **D.** The Division shall include in a negotiated rate agreement the effective date of the  
644 negotiated rate.

645

646 **R6-6-2115. Legal and Contractual Remedies**

- 647 **A.** The remedies in this Section apply to protests of the posting of a Request for Qualified  
648 Vendor Applications, the denial of a Qualified Vendor Application in its entirety, or  
649 denial of one or more services included in the Qualified Vendor Application. An  
650 applicant or Qualified Vendor may protest by filing:
- 651 1. A written Request for Problem Solving with the Division Assistant Director, or  
652 2. A Notice of Protest with the Department procurement officer.
- 653 **B.** Request for Problem Solving.

- 654 1. The Qualified Vendor or Qualified Vendor Applicant shall include the following  
655 information in the Request for Problem Solving:
- 656 a. Name, address, and telephone number of the protester,
  - 657 b. Signature of the protester or its representative,
  - 658 c. Identification of the adverse action by the Division that is in dispute,
  - 659 d. A statement of the legal and factual grounds of the intended protest,  
660 including copies of any relevant documents, and
  - 661 e. The relief requested.
- 662 2. The Qualified Vendor or Qualified Vendor Applicant shall file the Request for  
663 Problem Solving with the Division within 21 days of the date the Qualified  
664 Vendor or Applicant receives notice of the action.
- 665 3. The Request for Problem Solving is deemed filed when the Division receives the  
666 written document.
- 667 4. Within 21 days of the filing the Request for Problem Solving, the Assistant  
668 Director shall reach resolution or determine that resolution cannot be reached.
- 669 5. If resolution is reached and documented, the Qualified Vendor or Qualified  
670 Vendor Applicant shall not be entitled to pursue further legal remedies with  
671 regard to the protested issue.
- 672 6. If resolution cannot be reached, the Assistant Director shall issue written  
673 verification to the Qualified Vendor or Qualified Vendor Applicant that the matter  
674 was not resolved. To pursue further review, the Qualified Vendor or Applicant  
675 shall file a Notice of Protest with the Department procurement officer, within 14  
676 days of the issuance of verification.

- 677 C. Notice of Protest.
- 678 1. The protester shall include the following information in the Notice of Protest:
- 679 a. Name, address, and telephone number of the protester,
- 680 b. Signature of the protester or its representative,
- 681 c. Identification of the action by the Division that is in dispute,
- 682 d. A statement of the legal and factual grounds of the intended protest
- 683 including copies of any relevant documents, and
- 684 e. The relief requested.
- 685 2. The protester shall file the Notice of Protest with the Department procurement
- 686 officer within 21 days of the date the protester receives notice of the action or
- 687 within 14 days of issuance of the verification of non-resolution through the
- 688 Problem Solving process from the Assistant Director.
- 689 3. The Notice of Protest is deemed filed when the Department procurement officer
- 690 receives the written document.
- 691 4. If a Notice of Protest is filed before the award of Qualified Vendor Agreements,
- 692 the Division may enter into Qualified Vendor Agreements unless the Department
- 693 procurement officer makes a written determination that there is reasonable
- 694 probability that the protest will be sustained and that delay is consistent with the
- 695 best interests of the state.
- 696 5. If applicable, the protester shall include in the Notice of Protest a copy of the
- 697 original Request for Problem Solving documentation and of the verification from
- 698 the Assistant Director.

- 699           6.     If the Department procurement officer sustains the protest in whole or part, and  
700                     determines that the Request for Qualified Vendor Applications, proposed  
701                     Qualified Vendor Agreement, or Qualified Vendor Agreement denial does not  
702                     comply with applicable statutes and rules, the Department procurement officer  
703                     shall implement an appropriate remedy as prescribed in subsection (C)(8).
- 704           7.     In determining the appropriate remedy, the Department procurement officer shall  
705                     consider the following:
- 706                     a.     Circumstances surrounding the procurement or proposed procurement,
  - 707                     b.     The seriousness of the procurement deficiency,
  - 708                     c.     The degree of prejudice to other interested parties,
  - 709                     d.     The degree of prejudice to the integrity of the procurement system,
  - 710                     e.     The good faith of the parties,
  - 711                     f.     The extent of performance,
  - 712                     g.     The costs to the state,
  - 713                     h.     The urgency of the procurement, and
  - 714                     i.     The impact of the relief on the Department’s mission.
- 715           8.     The Department procurement officer may consider the following actions, alone or  
716                     in combination, as an appropriate remedy:
- 717                     a.     Decline to exercise an option to renew under the Qualified Vendor  
718                             Agreement,
  - 719                     b.     Terminate the Qualified Vendor Agreement,
  - 720                     c.     Reissue the Request for Qualified Vendor Applications,
  - 721                     d.     Issue a new Request for Qualified Vendor Applications,

- 722 e. Include the Qualified Vendor in the list of respondents to a Vendor Call  
723 for Services,
- 724 f. Award a Qualified Vendor Agreement as provided in these procurement  
725 rules, or
- 726 g. Any other remedial action that is reasonable and appropriate under the  
727 circumstances.
- 728 9. Within 21 days of receipt of the Notice of Protest, the Department procurement  
729 officer shall send a written decision to the protester by certified mail, return  
730 receipt requested, or by any other method that provides evidence of receipt and  
731 shall send a copy of the decision to the Division. The Department procurement  
732 officer shall explain the reasons for the conclusions reached in the decision.
- 733 10. Upon receipt of the decision from the Department procurement officer, the  
734 protester may file an appeal with the Department's Office of Appeals as  
735 authorized in A.R.S. §§ 41-1991, 41-1992(A) through (C), excluding any  
736 references to review by the Appeals Board, and A.R.S. § 41-1993(A).
- 737 11. The protester may proceed to the next level of appeal if the protester does not  
738 receive a response within 21 days.
- 739 12. Upon receipt of the decision from the Department's Office of Appeals, the  
740 protester may seek relief through the Superior Court as provided in A.R.S. § 12-  
741 901 et seq.

742

743 **R6-6-2116. Resolution of Agreement Claims and Controversies**

- 744 **A.** Claims under Qualified Vendor Agreements shall be filed with the Department  
745 procurement officer within 12 months of the date the Department has denied payment.
- 746 **B.** The Department procurement officer shall have the authority to settle and resolve  
747 Qualified Vendor Agreement claims subject to subsection (C). Appeals from decisions of  
748 the Department procurement officer may be made to the Department Office of Appeals as  
749 authorized in A.R.S. §§ 41-1991, 41-1992(A) through (C), excluding any references to  
750 review by the Appeals Board, and A.R.S. § 41-1993(A).
- 751 **C.** The settlement or resolution of a claim in excess of \$10,000 requires the prior written  
752 approval of the Department Director.
- 753 **D.** If a claim cannot be resolved by mutual agreement, the Department procurement officer  
754 shall, upon a written request by the Qualified Vendor for a final decision, issue a written  
755 decision no more than 60 days after the request is filed. Before issuing a final decision,  
756 the Department procurement officer shall review the facts pertinent to the claim and  
757 secure any necessary assistance from legal, fiscal, and other advisors.
- 758 **E.** The Department procurement officer shall furnish a copy of the decision to the Qualified  
759 Vendor, by certified mail, return receipt requested, or by any other method that provides  
760 evidence of receipt. The decision shall include:
- 761 1. A description of the claim;
  - 762 2. A reference to the pertinent Qualified Vendor Agreement provision;
  - 763 3. A statement of the factual areas of agreement or disagreement;
  - 764 4. A statement of the Department procurement officer's decision, with supporting  
765 rationale; and

766 5. A Statement of the Qualified Vendor's Appeal Rights and required time-frame for  
767 appeal.

768 **F.** The Department's procurement officer may extend the time limit for decisions set forth in  
769 R6-6-2116(D) for a reasonable time not to exceed 30 days. The Department procurement  
770 officer shall notify the Qualified Vendor in writing that the time for the issuance of a  
771 decision has been extended and the date by which a decision shall be issued.

772 **G.** If the Department procurement officer fails to issue a decision within 60 days after the  
773 request is filed or within the time prescribed under subsection (F) of this rule, the  
774 Qualified Vendor may proceed as if the Department procurement officer had issued an  
775 adverse decision.

776 **H.** Upon receipt of the decision from the Department procurement officer, the protester may  
777 file an appeal with the Department's Office of Appeals as authorized in A.R.S. §§ 41-  
778 1991, 41-1992(A) through (C), excluding any references to review by the Appeals Board,  
779 and A.R.S. § 41-1993(A).

780

781 **R6-6-2117. Controversies Involving State Claims Against a Qualified Vendor**

782 All claims asserted by the state against a Qualified Vendor that are not resolved by mutual  
783 agreement shall promptly be referred by the Department procurement officer to the Department's  
784 Office of Appeals for a hearing without regard to the procedures set forth in these rules. The  
785 Department procurement officer shall provide notice to the Qualified Vendor that the claim has  
786 not been resolved by mutual agreement and is being referred to the Department's Office of  
787 Appeals.