

2023 DEC 19 AM 10:36

FILED

AGENCY RECEIPT

Notice of Emergency Rules

1. Agency name: Arizona State Board of Nursing
2. The subchapters, if applicable; the Articles; the Parts, if applicable; and the Subsections involved in the rulemaking, listed in alphabetical and numerical

order:

Section

R4-19-207(A)(2)(k)

**AGENCY CERTIFICATE  
NOTICE of EMERGENCY RULES**

FILED

- 1. **Agency name:** Arizona State Board of Nursing
- 2. **Chapter heading:** Board of Nursing
- 3. **Code citation for the chapter:** 4 A.A.C. 19
- 4. **The subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in rulemaking, listed in alphabetical and numerical order:**

**Sections Affected**

A.A.C. R4-19-207(A)(2)(k)

- 5. **The emergency rules contained in this package are true and correct as made.**

6. Joey Ridenour  
**Signature of Agency Chief Executive Officer**  
Joey Ridenour  
**Printed or typed name of signer**

10/31/23  
**Date of signing**  
Executive Director  
**Title of signer**



SECRETARY OF STATE

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FILED

KRISTIN K. MAYES  
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL

Ms. Joey Ridenour, R.N., M.N., F.A.A.N.  
Executive Director  
Arizona State Board of Nursing  
1740 W. Adams Street, Ste. 2000  
Phoenix, Arizona 85007

RE: A.G. Rule No. AGR23-006; A.A.C. R4-19-207(A)(Emergency Rules; New Nursing Programs)

Dear Ms. Ridenour,

We have reviewed the above-referenced emergency rules adopted by the Arizona State Board of Nursing. We have determined that the rule is in proper form, is clear, concise and understandable, within the power of the Board to adopt, adopted within legislative standards, and was adopted in compliance with appropriate procedures. In addition, we have determined that the Board has demonstrated that the rules need to be effective upon filing with the Secretary of State.

Accordingly, pursuant to A.R.S. § 41-1026, I have affixed my signature to the original Approval of Emergency Rules and have forwarded it together with the original emergency rules, preamble, and three copies of each to the Secretary of State.

The Attorney General's approval of the emergency rules shall not be construed as an endorsement of policy issues relating to or resulting from the rulemaking. Policy decisions relating to the rulemaking are those of the Arizona State Board of Nursing and not the Office of the Attorney General.

We have enclosed a copy for your reference.

Sincerely,

Kristin K. Mayes  
Attorney General

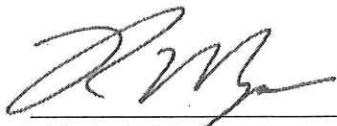
Enclosure

ATTORNEY GENERAL APPROVAL OF EMERGENCY RULES FILED

1. **Agency Name:** Arizona State Board of Nursing
2. **Chapter Heading:** 19 Board of Nursing
3. **Code Citation for the Chapter:** 4 A.A.C. 19
4. **The Articles and the Sections involved in the rulemaking, listed in numerical order:**

<u>Sections</u>	<u>Action</u>
Article: 19	
A.A.C. R4-19-207	Amend

The rules contained in this package are approved as emergency rules pursuant to the standards set forth in A.R.S. § 41-1026. The Attorney General's approval of the rule shall not be construed as an endorsement of policy issues relating to or resulting from the rulemaking. Policy decisions relating to the rulemaking are those of the Arizona State Board of Nursing and not the Office of the Attorney General. The rules are effective immediately upon filing with the Arizona Secretary of State.



Kristin K. Mayes  
Attorney General

December 13, 2023  
Date

FILED

**NOTICE OF EMERGENCY RULEMAKING**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 19. BOARD OF NURSING**

**ARTICLE 2**

**PREAMBLE**

<b><u>1. Articles, Parts and Sections Affected</u></b>	<b><u>Rulemaking Action</u></b>
R4-19-207(A)	Amend

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

Authorizing statutes: A.R.S. § 32-1606(A)(1)

Implementing statutes: A.R.S. § 32-1606(B)(13)

- a. **The effective date of the rule:** The date this rule is filed with the Secretary of State’s Office.
- b. **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):**

The Board seeks an immediate effective date, pursuant to A.R.S. § 41-1032(A)(1), due to the ongoing nursing shortage in Arizona, which constitutes a public health and safety emergency. (Please see Section 12, below.)

Additionally, providing greater flexibility for the Nursing Board to approve new nursing programs for Arizona constitutes a benefit to the public pursuant to A.R.S. § 41-1032(A)(4), in that new nursing programs provide new jobs for program faculty and staff, and educate Arizona-based students to become nurses. This is both an economic benefit to the nurses, and the patients they serve, as well as a benefit for public health and safety.



**3. 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:**

N/A

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

Name: Emma Mamaluy  
Chief Counsel  
Address: 1740 West Adams Street, STE 2000  
Phoenix, AZ 85014  
Telephone: 602-771-7844  
Fax: 602-771-7888  
E-mail: [emamaluy@azbn.gov](mailto:emamaluy@azbn.gov)  
Website: [www.azbn.gov](http://www.azbn.gov)

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

Due to the Arizona nursing shortage (see, Section 12, below), and the barrier with the Board's lack of discretion under the current rule, the Board seeks to amend A.A.C. R4-19-207(A)(2)(k) as in the best interests of the public health, safety, and welfare, and in the public's best interest.

The current rule, A.A.C. R4-19-207(A)(2)(k) contains a non-discretionary bar that prohibits the Board from approving any new nursing programs for a parent institution that has an existing nursing program that is not in compliance with the requirements of A.A.C. R4-19-207(A)(2)(k)(i – iii).

The effect of this prohibition is that parent institutions that are otherwise highly compliant and successful, and have a demonstrated record of running successful programs, but have any program that is not reaching all standards, are unable to open another program, even if the Board would otherwise approve the application.

There are already several parent institutions that are in this exact situation – i.e., they have existing programs that do not meet one or more of the requirements in A.A.C. R4-19-207(A)(2)(k)(i – iii), and

so these parent institutions are currently unable to open a new nursing program. Some of the parent institutions are running other programs that are doing well, or have shown great improvement, yet the Board does not have discretion to consider new program applications.

Further, this rulemaking is intended to provide the Board with increased flexibility, while still protecting the public by ensuring that key standards are maintained. The language changes are also anticipated to provide clarification, to eliminate the unnecessary and unused requirement regarding on time graduation, and to focus the National Council Licensure Examination (“NCLEX”) scores on the past year, rather than past two years.

The public’s best interest will also be served by facilitating the creation of new jobs for faculty and staff, along with improved job opportunities for the nursing students.

**6. 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:**

No study was used related to this rule.

**7. 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.

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

It is anticipated that this rulemaking will result in a positive impact on the Arizona economy, small businesses, and consumers through job creation as new nursing programs are opened, and the opportunity for new nurses to begin work in Arizona.

**9. 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:**

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:**

No such analysis was submitted to the Nursing Board.

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

None.

**11. An agency explanation about the situation justifying the rulemaking as an emergency rule:**

As of January 2022, Arizona ranked among the top 5 states with the most severe healthcare staffing shortages, with the demand for specialized nurses in Arizona projected to increase by 23% by 2025. The U.S. Bureau of Labor Statistics (BLS) estimates approximately 195,400 openings for registered nurses in Arizona from 2021 to 2031. According to a report from Vivian Health, a national healthcare hiring marketplace, Arizona is expected to experience the most significant change in demand for registered nurses between 2020 and 2030. In 2020, there were 58,480 RNs employed in Arizona.

The rule changes proposed provide greater flexibility to the Nursing Board to be able to approve the initiation of new nursing programs for a parent institution that may have an existing program(s) with some issues, but has overall demonstrated the ability to produce a program compliant with regulatory requirements.

While the nursing programs will not open immediately due to the extensive planning and preparations involved, this rule change will allow parent institutions, if approved by the Board, to immediately begin the process, which will in turn demonstrably accelerate the timeframe within which the programs will be able to start training new nurses in Arizona.

**12. The date the Attorney General approved the rule:**

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



A. No change.

1. No change.

2. No change.

a. No change.

b. No change.

c. No change.

c. No change.

d. No change.

e. No change.

f. No change.

g. No change.

h. No change.

i. No change.

j. No change.

k. For a parent institution ~~or owner corporation~~ that has ~~multiple~~ an existing nursing programs ~~program~~ in one or more U.S. jurisdictions including Arizona, evidence for each of its nursing programs that includes:

i. Program approval in good standing with no ~~conditions, restrictions, ongoing investigations or deficiencies~~ order entered in this or any other jurisdiction, which if entered by this state would constitute the denial of a license or a disciplinary action within the meaning of A.R.S. § 32-1601, subsection 12, paragraphs (d), (e), (f), (g), (h); and

ii. An NCLEX pass rate of at least 80% for the ~~past two years~~ 12 months preceding the current application ~~or since inception; and or~~

iii. An on-time graduation rate consistent with the requirements of R4-19-206. The parent institution successfully demonstrates to the Board that:

a. The program is in the best interests of the public. The Board's consideration of what is in the best interests of the public shall include, but is not limited to, the geographic need for a new nursing program, the populations that would be served by the program, adequate program oversight, institutional financial security, adequacy of the program proposal, and a demonstrated history of cooperation with accrediting and regulatory bodies; and

b. The program will be capable of meeting all other applicable requirements for the establishment of a nursing program.

B. No change.

C. No change.

D. No change.

E. No change.

F. No change.

G. No change.

H. No change.

I. No change.