

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

ARIZONA LONG-TERM CARE SYSTEM

PREAMBLE

1. Sections Affected

Rulemaking Action

R9-28-204.

Amend

R9-28-205.

Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. §36-2903.01

Implementing statute: A.R.S. § 36-2907, amended by Section 13 of Laws 2011, Chapter 31 (“the 2011 Act”)

3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Notice of Proposed Exempt Rulemaking: 17 A.A.R. 1526, August 12, 2011

Notice of Exempt Rulemaking: 17 A.A.R. 1876, September 23, 2011

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

Name: Mariaelena Ugarte

Address: AHCCCS

Office of Administrative Legal Services

701 E. Jefferson, Mail Drop 6200

Phoenix, AZ 85034

Telephone: (602) 417-4693

Fax: (602) 253-9115

E-mail: AHCCCSRules@azahcccs.gov

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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The Governor's Medicaid Reform Plan, announced on March 15, 2011, proposals to reduce nonfederal expenditures for the AHCCCS program by approximately \$500 million during state fiscal year 2012. The AHCCCS Administration promulgated limitations to respite services on September 23, 2011 with an effective date of October 1, 2011.

Due to legislation specified in Laws 2012, Chapter 299, Section 7, the rule-making authority authorized in Laws 2011, Chapter 31, Section 34 (SB 1619) was repealed. Additionally, Laws 2012, Chapter 299, Section 8 stipulated that rules adopted through the previous year's authority (SB1619) would expire December 31, 2013 without specific statutory authority.

After an evaluation of the Agency's overall statutory authority regarding covered services, rates, and eligibility, AHCCCS has determined that it will re-promulgate certain rules implementing "program changes" made pursuant to Laws 2011, Chapter 31, Section 34 by identifying the specific statutory authority for the rules to ensure that the rules continue beyond December 31, 2013 in accordance with Laws 2012, Chapter 299, Section 8.

Therefore, to ensure continuity of the rules previously adopted under Section 34, the AHCCCS Administration is re-promulgating the same rules which became effective October 1, 2011. No changes have been proposed to the language of the rules.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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 studies were relied upon for the implementation of this rulemaking, but analysis of the member utilization of respite services reported through claims and encounters for dates of service during SFY 2010, has assisted the AHCCCS Administration in arriving at the limitations. Prior to promulgation, AHCCCS reviewed historical information regarding utilization of the services limited by the rule. Based on that review, AHCCCS determined that at least 75 percent of utilizing members would remain unaffected if these limitations are implemented.

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. The preliminary summary of the economic, small business, and consumer impact:

AHCCCS estimates that the limitations on respite hours will reduce total expenditures by approximately \$5.2 million in combined state and federal funds for the state fiscal year 2012.

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Mariaelena Ugarte
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701 E. Jefferson, Mail Drop 6200
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E-mail: AHCCCSRules@azahcccs.gov
Web site: www.azahcccs.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Proposed rule language will be available on the AHCCCS website www.azahcccs.gov the week of March 18, 2013. Please send written or email comments to the above address by the close of the comment period, 5:00 p.m., May 13, 2013.

Date: May 13, 2013

Time: 11:00 a.m.

Location: AHCCCS
701 East Jefferson
Phoenix, AZ 85034

Nature: Public Hearing

Date: May 13, 2013

Time: 11:00 a.m.

Location: ALTCS: Arizona Long-Term Care System
1010 N. Finance Center Dr, Suite 201
Tucson, AZ 85710

Nature: Public Hearing

Date: May 13, 2013

Time: 11:00 a.m.

Location: 2717 N. 4th St. STE 130
Flagstaff, AZ 86004

Nature: Public Hearing

11. 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 have been prescribed.

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 analysis was submitted.

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

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

ARIZONA LONG-TERM CARE SYSTEM

ARTICLE 2. COVERED SERVICES

Section:

R9-28-204. Institutional Services

R9-28-205. Home and Community Based Services (HCBS)

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

ARIZONA LONG-TERM CARE SYSTEM

ARTICLE 2. COVERED SERVICES

R9-28-204. Institutional Services

A. No Change

B. The Administration and a contractor shall include the following services in the per diem rate for a facility listed in subsection (A):

1. Nursing care services;
2. Rehabilitative services prescribed as a maintenance regimen;
3. Restorative services, such as range of motion;
4. Social services;
5. Nutritional and dietary services;
6. Recreational therapies and activities;
7. Medical supplies and non-customized durable medical equipment under 9 A.A.C. 22, Article 2;
8. Overall management and evaluation of a member's care plan;
9. Observation and assessment of a member's changing condition;
10. Room and board services, including supporting services such as food and food preparation, personal laundry, and housekeeping;
11. Non-prescription and stock pharmaceuticals; and
- ~~12. Respite care services not to exceed 30 days per contract year.~~
12. Respite care services not to exceed 600 hours per benefit year.

C. No Change

D. Limitations. The following limitations apply:

1. A private room in a NF, ICF-MR, or facility identified in R9-28-1105(A)(1)(b), (B), or (C) is covered only if:
 - a. The member or has a medical condition that requires isolation, and

- b. The member's primary care provider or attending physician provides written authorization;
2. Each ICF-MR shall meet the standards in A.R.S. § 36-2939(B)(1), and in 42 CFR 483, Subpart I, February 28, 1992, incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments;
3. Bed hold days as authorized by the Administration or its designee for a fee-for-service provider shall meet the following criteria:
 - a. Short-term hospitalization leave for a member age 21 and over is limited to 12 days per AHCCCS ~~contract year~~ benefit year, and is available if a member is admitted to a hospital for a short stay. After the short-term hospitalization, the member is returned to the institutional facility from which leave is taken, and to the same bed if the level of care required can be provided in that bed; and
 - b. Therapeutic leave for a member age 21 and older is limited to nine days per AHCCCS ~~contract year~~ benefit year. A physician order is required for therapeutic leave from the facility for one or more overnight stays to enhance psycho-social interaction, or as a trial basis for discharge planning. After the therapeutic leave, the member is returned to the same bed within the institutional facility;
 - c. Therapeutic leave and short-term hospitalization leave are limited to any combination of 21 days per ~~contract year~~ benefit year for a member under age 21;
4. The Administration or a contractor shall cover services that are not part of a per diem rate but are ALTCS covered services included in this Article, and deemed necessary by a member's case manager or the case manager's designee if:
 - a. The services are ordered by the member's primary care provider; and
 - b. The services are specified in a case management plan under R9-28-510;
5. A member age 21 through 64 is eligible for behavioral health services provided in a facility under subsection (A)(3) that has more than 16 beds, for up to 30 days per admission and no more than 60 days per ~~contract year~~ benefit year as allowed under the Administration's Section 1115 Waiver with CMS and except as specified by 42 CFR 441.151, May 22, 2001, incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments; and
6. The limitations in subsection (D)(5) do not apply to a member:
 - a. Under age 21 or age 65 or over, or

- b. In a facility with 16 beds or less.

R9-28-205. Home and Community Based Services (HCBS)

A. No Change

B. No Change

C. Home and community based services include the following:

1. Home health services provided on a part-time or intermittent basis. These services include:
 - a. Nursing care;
 - b. Home health aide;
 - c. Medical supplies, equipment, and appliances;
 - d. Physical therapy;
 - e. Occupational therapy;
 - f. Respiratory therapy; and
 - g. Speech and audiology services;
2. Private duty nursing services;
3. Medical supplies and durable medical equipment, including customized DME, as described in 9 A.A.C. 22, Article 2;
4. Transportation services to obtain covered medically necessary services;
5. Adult day health services provided to a member in an adult day health care facility licensed under 9 A.A.C. 10, Article 5, including:
 - a. Supervision of activities specified in the member's care plan;
 - b. Personal care;
 - c. Personal living skills training;
 - d. Meals and health monitoring;
 - e. Preventive, therapeutic, and restorative health related services; and
 - f. Behavioral health services, provided either directly or through referral, if medically necessary;
6. Personal care services;
7. Homemaker services;
8. Home delivered meals, that provide at least one-third of the recommended dietary allowance, for a member who does not have a developmental disability under A.R.S. § 36-551;
9. ~~Respite care services for no more than 720 hours per contract year;~~

9. Respite care services for no more than 600 hours per benefit year;

10. Habilitation services including:

- a. Physical therapy;
- b. Occupational therapy;
- c. Speech and audiology services;
- d. Training in independent living;
- e. Special development skills that are unique to the member;
- f. Sensory-motor development;
- g. Behavior intervention; and
- h. Orientation and mobility training;

11. Developmentally disabled day care provided in a group setting during a portion of a 24-hour period, including:

- a. Supervision of activities specified in the member's care plan;
- b. Personal care;
- c. Activities of daily living skills training; and
- d. Habilitation services; and

12. Supported employment services provided to a member in the ALTCS transitional program under R9-28-306 who is developmentally disabled under A.R.S. § 36-551.