

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

ADMINISTRATION – ARIZONA LONG TERM CARE SYSTEM

PREAMBLE

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

**Rulemaking Action:**

R9-28-801	Amend
R9-28-801.01	Repeal
R9-28-802	Amend
R9-28-803	Amend
R9-28-806	Amend
R9-28-807	Amend

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

Authorizing statute: A.R.S. § 36-2932  
Implementing statute: A.R.S. § 36-2915, 36-2916, 36-2935, 36-2956

**3. The effective date of the rule:**

AHCCCS requests a regular 60-day effective date.

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

Notice of Rulemaking Docket Opening: 23 A.A.R. 3431, December 15, 2017  
Notice of Proposed Rulemaking 23 A.A.R. 3403, December 15, 2017

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

Name: Nicole Fries  
Address: AHCCCS  
Office of Administrative Legal Services  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4232  
Fax: (602) 253-9115  
E-mail: AHCCCSRules@azahcccs.gov  
Web site: www.azahcccs.gov

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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

The rulemaking is necessary to comport with federal law and to ensure that AHCCCS maximizes the opportunity for recovery of payments made for medical assistance to ALTCS members consistent with federal law. In addition, the rulemaking will likely increase State revenues and improve the fiscal health of the State by extending the imposition of TEFRA liens to members under the age of 55 years.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

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

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

Not applicable.

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

The economic impact will be minimal on consumers and the Administration, because the changes are anticipated to affect only a small number of ALTCS members. Additionally, any economic impact on the economy of the State will be minimal because when AHCCCS does make recoveries, roughly 70% is returned to the federal government.

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

The only changes made between the proposed rulemaking and the final rulemaking were minor typographical changes for consistency and clarity across the agency's rules.

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

No comments were received.

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

No other matters 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:**

The TEFRA lien provisions are codified at 42 U.S.C. 1396p(a), providing AHCCCS the authority to file TEFRA liens on the real property of certain Medicaid members who are determined to be permanently institutionalized (PI) and cannot return home. However, the Administration's TEFRA regulations are not more stringent than the applicable 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 was submitted.

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

Not applicable.

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

Not applicable.

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

**TITLE 9. HEALTH SERVICES**  
**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**  
**ADMINISTRATION – ARIZONA LONG-TERM CARE SYSTEM**  
**ARTICLE 8. TEFRA LIENS AND RECOVERIES**

Section

R9-28-801	Definitions Related to TEFRA Liens
R9-28-801.01	<del>TEFRA Liens – General</del> <u>Repeal</u>
R9-28-802	<del>TEFRA Liens – Affected Members</del> <u>Filings</u>
R9-28-803	TEFRA Liens – Prohibitions
R9-28-806	TEFRA Liens – Recovery
R9-28-807	TEFRA Liens – Release

## ARTICLE 8. TEFRA LIENS AND RECOVERIES

### R9-28-801. Definitions Related to TEFRA Liens

In addition to the definitions in A.R.S. §§ 36-2901 and 36-2931, 9 A.A.C. 22, Article 1, and 9 A.A.C. 28, Article 1, the following definitions apply to this Article:

“Consecutive days” means days following one after the other without an interruption resulting from a discharge.

“File” means the date that AHCCCS receives a request for a State Fair Hearing under R9-28-805, as established by a date stamp on the request or other record of receipt.

“Home” means property in which a member has an ownership interest and that serves as the member’s principal place of residence. This property includes the shelter in which a member resides, the land on which the shelter is located, and related outbuildings.

“Recover” means that AHCCCS takes action to collect from a claim.

“TEFRA lien” means a lien under 42 U.S.C. 1396p of the Tax Equity and Fiscal Responsibility Act of 1982. This type of lien is placed on an AHCCCS member’s interest in any real property before the member is deceased.

### R9-28-801.01. ~~TEFRA Liens—General Repeal~~

~~Purpose. The purpose of TEFRA is to allow AHCCCS to file a lien on an AHCCCS member’s interest in any real property before the member is deceased, including but not limited to life estates and beneficiary deeds.~~

### R9-28-802. TEFRA Liens – ~~Affected Members~~Filings

- A. Except for members under R9-28-803, AHCCCS shall file a TEFRA lien against the real property of all members who are:
1. Receiving ALTCS services, and
  2. ~~55 years of age or older, and~~
  3. Permanently institutionalized.
- B. A rebuttable presumption exists that a member is permanently institutionalized if the member has continually resided in a nursing facility, ~~ICF/MR~~ Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), or other medical institution defined in 42 CFR 435.1010 for 90 or more consecutive days. A member may rebut the presumption by providing a written opinion from a treating physician, rendered to a reasonable degree of medical certainty, that the member’s condition is likely to improve to the point that the member will be discharged from the medical institution and will be capable of returning home by a date certain.
- C. A TEFRA lien may also be imposed against the property of a member where a court judgment determined that benefits were incorrectly paid on behalf of the member.

### R9-28-803. TEFRA Liens – Prohibitions

AHCCCS shall not file a TEFRA lien against a member's home if one of the following individuals is lawfully residing in the member's home:

1. Member's spouse;
2. Member's child who is under the age of 21;
3. Member's child who is blind or disabled under 42 U.S.C. 1382c; or
4. Member's sibling who has an equity interest in the home and who was residing in the member's home for at least one year immediately before the date the member was admitted to a nursing facility, ~~ICF/MR~~ ICF/IID, or other medical institution as defined under 42 CFR 435.1010.

**R9-28-806. TEFRA Liens – Recovery**

**A.** AHCCCS shall seek to recover a TEFRA lien for the amount of the medical assistance provided up to the amount of the sale upon the sale or transfer of the real property subject to the lien made prior to the member's death

**B.** After the member's death, AHCCCS shall seek to recover a TEFRA lien for the amount of the medical assistance received by the member at the age of 55 years or older from the member's estate after the sale or transfer of the real property subject to the lien. However, AHCCCS shall not seek to recover the TEFRA lien or attempt recovery against any real property subject to the TEFRA lien so long as the member is survived by the member's:

1. Spouse;
2. Child under the age of 21; or
3. Child who receives benefits under either Title II or Title XVI of the Social Security Act as blind or disabled, as defined under 42 U.S.C. 1382c.

**~~B.C.~~** AHCCCS shall not seek to recover a TEFRA lien on an individual's home if the member is survived by:

1. A sibling of the member who currently resides in the deceased member's home and who has resided in the member's home on a continuous basis since at least one year immediately before the date of the member's admission to the nursing facility, ~~ICF/MR~~ ICF/IID, or other medical institution as defined under 42 CFR 435.1010 and has ; or
2. A child of the member who resides in the deceased member's home and who:
  - a. Was residing in the member's home for a period of at least two years immediately before the date of the member's admission to the nursing facility, ~~ICF/MR~~ ICF/IID, or other medical institution as defined under 42 CFR 435.1010; ~~and~~
  - b. Provided care to the member that allowed the member to reside at home rather than in an institution; ~~and~~ and
  - c. Has resided in the member's home on a continuous basis since the admission of the deceased member to the medical institution.

**~~C.D.~~** To determine whether a child of the member provided care under subsection (B)(2), AHCCCS shall require the following information:

1. A physician's written statement that describes the member's physical condition and service needs for the previous two years before the member's death;
2. Verification that the child actually lived in the member's home;
3. A written statement from the child providing the services that describes and attests to the services provided;
4. A written statement, if any, made by the member prior to death regarding the services received; and
5. A written statement from physician, friend, or relative as witness to the care provided.

**R9-28-807. TEFRA Liens – Release**

AHCCCS shall issue a release of a TEFRA lien within 30 days of:

1. Satisfaction of the lien; or
2. Notice that the member has been discharged from the nursing facility, ~~ICF/MR~~ ICF/IID, or other medical institution, defined under 42 CFR 435.1010, and the member has returned home and is physically residing in the home with the intention of remaining in the home. Discharge to an alternative HCBS setting defined at R9-28-101 does not constitute a return to the home; ~~or~~
3. ~~Notice of the member's death, if a lien has been filed on a life estate.~~