

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

ARTICLE 11. CIVIL MONETARY PENALTIES AND ASSESSMENTS

PREAMBLE

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

| | <u>Rulemaking Action</u> |
|------------|---------------------------------|
| R9-22-1104 | Amend |
| R9-22-1105 | Amend |
| R9-22-1108 | Amend |

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

Authorizing statute: A.R.S. § 36-2918
Implementing statute: A.R.S. § 36-2957

- 3. The effective date of the rule and the agency's reason it selected the effective date:**

As specified in A.R.S. § 41-1032(A)(4), the agency requests an immediate effective date to provide a benefit to the public and a penalty is not associated with a violation of the rule.

- 4. 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 Rulemaking Docket Opening: 29 A.A.R. 3693, December 1, 2023
Notice of Proposed Rulemaking: 29 A.A.R. 3671, December 1, 2023

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

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 801 E. Jefferson
 Phoenix, AZ 85034
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- 6. An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, to include an**

explanation about the rulemaking:

The proposed rulemaking is submitted in response to the Five-Year Review Report submitted on June 29, 2023, which is intended to clarify the current rules. The rule amendments are proposed to promulgate rules that are clear, concise, and understandable for members of the public. The proposed rules do not impose any additional burdens or costs to regulated persons, and failure to conduct this rulemaking will promote unnecessary utilization of resources, and the incurring of unnecessary costs.

7. 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 conducted relevant to the rule.

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

None of the changes proposed in this 5YRR have any effect on the economic impact of this chapter. Substantive and procedural rights of members are not affected, nor are any of the programs of the Administration. These proposed changes are merely clarifying.

10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):

No changes were made between the proposed and final rulemakings.

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

No public comments were made.

12. 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 not be limited to:

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 rulemaking must be established consistent with 42 CFR § 1003.200. The rule is not more stringent than federal law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

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

Not applicable.

14. Whether the rule was previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:

Not applicable.

15. The full text of the rules follows:

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Section

- R9-22-1104. Mitigating Circumstances
- R9-22-1105. Aggravating Circumstances
- R9-22-1108. Request for a Compromise

R9-22-1104. Mitigating Circumstances

AHCCCS shall consider any of the following to be mitigating circumstances when determining the amount of a ~~penalty,~~ ~~assessment, or penalty~~ penalties and assessments.

1. ~~Nature and circumstances of a claim.~~ The following are mitigating circumstances:
 - a. All the services are of the same type,
 - b. All the dates of services occurred within six months or less,
 - c. The number of claims submitted is less than 25,
 - d. The nature and circumstances do not indicate a pat- tern of inappropriate claims for the services, and
 - e. The total amount claimed for the services is less than \$1,000.
2. ~~Degree of culpability.~~ The degree of culpability of a person who presents or causes to present a claim is a mitigating circumstance, including but not limited to, if:
 - a. Each service is the result of an unintentional and unrecognized error in the process that the person followed in presenting or in causing to present the service,
 - b. Corrective steps were taken promptly by the person after the error was discovered, and
 - c. The person had a fraud and abuse control plan that was operating effectively at the time each claim was presented or caused to be presented.
3. ~~Financial condition.~~ The financial condition of a person who presents or causes to present a claim is a mitigating circumstance if the imposition of a penalty, assessment, or penalty and assessment without reduction will render the provider incapable to continue providing services. AHCCCS shall consider the resources available to the person when determining the amount of the penalty, assessment, or penalty and assessment.
4. ~~Other matters as justice may require.~~ AHCCCS shall take into account other circumstances of a mitigating nature, if in the interest of justice, the circumstances require a reduction of the penalty, assessment, or penalty and assessment.

R9-22-1105. Aggravating Circumstances

AHCCCS shall consider any of the following to be aggravating circumstances when determining the amount of a penalty, assessment, or penalty and assessment.

1. ~~Nature and circumstances of each claim.~~ The nature and circumstances of each claim and the circumstances under which the claim is presented or caused to be presented are aggravating circumstances if:
 - a. ~~A person has forged, altered, recreated, or destroyed records;~~ A person has forged, altered, recreated, destroyed, or failed to maintain records;
 - b. The person refuses to provide pertinent documentation to AHCCCS for a claim or refuses to cooperate with investigators;
 - c. ~~The services are of several types;~~ The services are of several billing code types;
 - d. ~~All the dates of services did not occur within six months or less;~~ All the dates of services occurred within six months or greater;
 - e. The number of claims submitted is greater than 25;
 - f. The nature and circumstances indicate a pattern of inappropriate claims for the services; and
 - g. The total amount claimed for the services is \$5,000 or greater.
2. ~~Degree of culpability.~~ The degree of culpability of a person who presents or causes to present each claim is an aggravating circumstance, including but not limited to, if:
 - a. The person knows or had reason to know that each service was not provided as claimed,
 - b. The person knows or had reason to know that no payment could be made because the person had been excluded from reimbursement by AHCCCS, or
 - c. The person knows or had reason to know that the payment would violate the terms of an agreement between the person and AHCCCS system.
 - d. The person knows or had reason to know that the payment would violate state or federal law.
3. ~~Prior offenses.~~ The prior offenses of a person who presents or causes to present each claim are an aggravating circumstance if:
 - a. At any time before the submittal of the claim the person was held criminally or civilly liable for any act, or

- b. The person had received an administrative sanction in connection with:
 - i. A Medicaid program,
 - ii. A Medicare program, or
 - iii. Any other public or private program of reimbursement for medical services.
- 4. ~~Effect on patient care.~~ The adverse effect on patient care that resulted, or could have resulted, from the failure to provide medically necessary care by a person in connection with a claim.
- 5. ~~Other matters as justice may require.~~ AHCCCS shall take into account other circumstances of an aggravating nature, if in the interest of justice, the circumstances require an increase of the penalty, assessment, or penalty and assessment.

R9-22-1108. Request for a Compromise

- A. To request a compromise, the person shall file a written request with AHCCCS within 30 days from the date of receipt of the Notice of Intent. The written request for compromise shall contain the person's reasons for the reduction or modification of the penalty, assessment, or penalty and assessment.
- B. Within 30 days from the date of receipt of the request for compromise from the person, AHCCCS shall send a Notice of Compromise Decision that accepts, denies, or offers a counter proposal to the person's request for compromise. If AHCCCS offers a counter proposal the amount of the counter proposal shall represent the penalty, assessment, or penalty and assessment.
 - 1. If AHCCCS does not withdraw the Notice of Intent under R9-22-1112 or denies the request for compromise the original penalty, assessment, or penalty and assessment is upheld.
 - 2. To dispute the Compromise Decision, the person shall file a request for a State Fair Hearing under R9-22-1110 within 30 days from the date of receipt of the Notice of Compromise Decision. A failure to respond to the Notice of Compromise Decision will lead to the decision being upheld.