



## NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKINGS

This section of the *Arizona Administrative Register* contains Notices of Supplemental Proposed Rulemakings.

After an agency has filed a Notice of Proposed Rulemaking and it is published in the *Register*, an agency may decide to make substantial changes to the rule after it is proposed. The agency prepares a Notice of Supplemental Proposed Rulemaking with these proposed changes. When filed, the notice is published under the deadline schedule in the back of the *Register*.

The Notice of Supplemental Proposed Rulemaking shall be published in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed rules should be addressed to the agency that promulgated the rules. Refer to item #4 below to contact the person charged with the rulemaking and item #11 for the close of record and information related to public hearings and oral comments.

### NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

#### TITLE 9. HEALTH SERVICES

#### CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

[R16-119]

#### PREAMBLE

- Citations to the agency's Notice of Rulemaking Docket Opening, the Notice of Proposed Rulemaking, and any other Notices of Supplemental Proposed Rulemaking (if applicable) as published in the *Register* as specified in R1-1-409(A). A list of any other related notices published in the *Register* as specified in R1-1-409(A):**

Notice of Rulemaking Docket Opening: 22 A.A.R. 784, April 8, 2016

Notice of Proposed Rulemaking: 22 A.A.R. 770, April 8, 2016 (*proposing an amendment to R9-22-712.15*)

Notice of Public Information: 22 A.A.R. 1067, May 6, 2016

- Articles, Parts, or Sections Affected (as applicable)** **Rulemaking Action:**  
R9-22-712.90 New Section

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

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

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

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

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Address: AHCCCS  
Office of Administrative and Legal Services  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034

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

This rulemaking is proposed as part of the AHCCCS Administration's obligation under the federal Medicaid Act, 42 U.S.C. § 1396a(a)(30)(A), to establish methods for the reimbursement of health care providers that are consistent with efficiency, economy, quality care, and adequate access to care for persons enrolled in AHCCCS, Arizona's implementation of the Medicaid program. Specifically, this rulemaking distinguishes services provided by a hospital-based freestanding emergency department from other hospital services and establishes the payment methodology for services provided by hospital-based freestanding emergency departments.

The Arizona Department of Health Services has established a class of health care institutions known as outpatient treatment centers (OTCs). See generally, A.A.C. Title 9, Chapter 10, Article 10. A subclass of OTCs is authorized to provide emergency department services. A.A.C. § R9-10-1019. In this rulemaking, OTCs licensed to provide emergency department services are referred to as "freestanding emergency departments" (FSEDs). FSEDs are rela-



tively new to the Arizona health care delivery system with most of the facilities opening since 2015. A single license may be issued for a hospital which also operates satellite facilities, such as FSEDs, at the request of the hospital. A.R.S. § 36-422(F). Under the billing methodologies currently in place, a claim for services provided in the hospital is indistinguishable from a claim for services provided in a FSED operated by the same hospital when a single group license is issued because provider registration is based on that license.

Outpatient hospital services are reimbursed using the outpatient prospective fee schedule described in A.A.C. R9-712.10 through R9-22-712.50. Because hospital-based FSED have been registered under the same license as the hospital operating the FSED, that reimbursement methodology has been used even though the hospital-based FSED does not have the same capabilities as a hospital emergency department. They often do not have the same equipment or access to on-call specialists and do not have the ability to immediately admit persons requiring inpatient care. By the very nature of being a FSED, transportation services are required when a patient requires inpatient care. Services provided by an OTC that is not hospital-based are reimbursed based on a capped fee schedule established by the AHCCCS Administration which also applies to services provided in any clinic or physician's office which, in general, is a lower total reimbursement than that provided for outpatient hospital services and associated professional (e.g., physician) services.

FSEDs generally offer and advertise hours of operation that exceed those of most urgent care clinics or physician's office. Media coverage and promotional materials published by hospitals present these facilities as an appropriate alternative to treatment by a primary care practitioner in an office setting. Treatment of non-emergency conditions by healthcare providers other than the patient's primary care practitioner restricts the ability of the primary care practitioner to coordinate care for the patient, potentially leading to sub-optimal health outcomes. As such, the AHCCCS Administration is concerned about use of the FSED as a substitute for services that are more appropriately and cost-effectively rendered in a clinic or physician's office.

This rulemaking requires hospital-based FSEDs to register separately from the hospital with which it shares common ownership regardless of whether both are listed as part of a single group license so that the AHCCCS Administration can clearly distinguish claims for services from hospital-based FSEDs from claims for services provided by the hospital itself. The rule provides that reimbursement for services in a hospital-based FSED is a percentage (that varies depending on the level of services provided) of the amount that would otherwise be paid for similar services provided as outpatient hospital services but does not include the adjustment in A.A.C. R9-22-712.35 that accounts for the unique costs of services provided in a hospital outpatient setting but which are not applicable to FSEDs. The percentage reductions are applied to level 1, 2, and 3 emergency department procedures, procedures which generally can be addressed by a primary care physician in an office setting.

The rulemaking also includes an exception that permits the application of the adjustment applicable to the hospital in instances where a FSED is established to replace the services of a hospital that has closed in a rural area where appropriate local care might not otherwise be available.

**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:**

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

**7. An explanation of the substantial change which resulted in the supplemental notice:**

The Notice of Proposed Rulemaking, published at 22 A.A.R. 770 on April 8, 2016, proposed amending R9-22-712.15 to provide that services rendered by outpatient treatment centers, including hospital-based FSEDs, would not be considered outpatient hospital services reimbursed as specified in A.A.C. R9-22-712.10 through R9-22-712.50. Instead, the Administration originally proposed that those services be reimbursed under the capped fee schedule established by AHCCCS Administration which schedule is exempt from the requirements of rule-making under A.R.S. § 41-1005(A)(9). Public comments received in response to the Notice of Proposed Rulemaking requested that the proposed rulemaking describe the reimbursement methodology in the proposed rule. In response, this Notice of Supplemental Proposed Rulemaking makes no changes to R9-22-712.15, but instead, creates a new rule, R9-22-712.90, that is specific to hospital-based FSEDs. Under the Supplemental Proposed Rulemaking, services provided at those facilities are treated as a special type of outpatient hospital services which are reimbursed based on a modified version of the methodology for other outpatient hospital services. The Supplemental Proposed Rulemaking sets forth the modified reimbursement methodology

The Notice of Proposed Rulemaking, published at 22 A.A.R. 770 on April 8, 2016, proposed that services provided by outpatient treatment centers, including hospital-based FSEDs, are not outpatient hospital services which are reimbursed as specified in A.A.C. R9-22-712.10 through R9-22-712.50. Instead, the administration proposed that those services be reimbursed under the capped fee schedule established by the AHCCCS Administration which schedule is exempt from the requirements of rule-making under A.R.S. 41-1005(A)(9). Public comments received in response to the Notice of Proposed Rulemaking requested that the Proposed Rulemaking describe the reimbursement methodology in the proposed rule. In response, this Supplemental Proposed Rulemaking treats hospital-based FSEDs as a special type of outpatient hospital services which are reimbursed based on a modified version of the



methodology for other outpatient hospital services.

**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:**

This rulemaking does not diminish a previous grant of authority of a political subdivision.

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

The Administration does not anticipate a significant economic impact on the implementing agency, small businesses, or consumers. Hospital-based FSEDs, a subclass of outpatient treatment centers, are relatively new to Arizona. Five such facilities have been identified as currently existing although the administration has information that additional hospital-based FSEDs are planned for the future. Because the administration cannot currently distinguish services provided by hospital-based FSEDs from other outpatient hospital services, the AHCCCS Administration presumes that services provided at these five facilities have been reimbursed as specified in A.A.C. R9-22-712.10 through R9-22-712.50. While this proposed rulemaking reduces the payments for level 1, 2 and 3 – services that could usually be provided more efficiently and cost effectively by a primary care physician – information provided to the administration by an operator of several of the hospital-based FSEDs suggests low utilization of services at those levels of care. As such, the administration assumes that the economic impact of this supplemental proposed rulemaking on hospital revenues will be minimal.

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

Name: James Maguire  
Address: AHCCCS  
Office of Administrative and 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

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

Close of the comment period is: September 6, 2016, 5 p.m. A person may submit their comments or attend the public hearing at one of the following locations:

Date: September 6, 2016  
Time: 2:00 p.m.  
Location: AHCCCS  
701 E. Jefferson  
Phoenix, AZ 85034

Nature: Public Hearing  
Date: September 6, 2016  
Time: 2:00 p.m.  
Location: ALTCS: Arizona Long-Term Care System  
1010 N. Finance Center Dr., Suite 201  
Tucson, AZ 85710

Nature: Public Hearing  
Date: September 6, 2016  
Time: 2:00 p.m.  
Location: 2717 N. 4th St., Suite 130  
Flagstaff, AZ 86004

Nature: Public Hearing

**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:**

None

**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:

Not applicable

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

None

14. The full text of the rules follows:

## TITLE 9. HEALTH SERVICES

### CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

#### ARTICLE 7. STANDARDS FOR PAYMENTS

Section

R9-22-712.90. Reimbursement of Freestanding Emergency Departments

#### ARTICLE 7. STANDARDS FOR PAYMENTS

##### R9-22-712.90. Reimbursement of Freestanding Emergency Departments

- A. "Hospital-based freestanding emergency department" (FSEDs) means an outpatient treatment center as defined in R9-10-101 that: (1) provides emergency department services under R9-10-1019, (2) is subject to the requirements of 42 CFR 489.24, and (3) shares an ownership interest with a hospital, regardless of whether the outpatient treatment center operates under a hospital's single group license as described in A.R.S. § 36-422.
- B. Hospital-based FSEDs shall be required to register with the Administration separately from the hospital and obtain a separate provider identification number. The Administration shall not charge a separate provider enrollment fee for registration of the hospital-based FSEDs. The Administration shall accept the hospital's compliance with the provider screening and enrollment requirements of 42 CFR Part 455 as compliance by the hospital-based FSEDs.
- C. For dates of service on and after January 1, 2017, and except as provided in subsection (D), hospital-based FSEDs shall be reimbursed a percentage of amounts otherwise reimbursable under sections R9-22-712.20 through R9-22-712.30 based on the Emergency Department Facility Level Coding Guidelines adopted by the American College of Emergency Physicians and the appropriate CPT and revenue codes:
1. 60% for a level 1 emergency department visit.
  2. 80% for a level 2 emergency department visit.
  3. 90% for a level 3 emergency department visit.
  4. 100% for a level 4 or 5 emergency department visit.
- D. Hospital-based FSEDs located in a city or town in a county with less than 500,000 residents where the only hospital in the city or town operating an emergency department closed on or after January 1, 2015, shall be reimbursed under sections R9-22-712.20 through R9-22-712.35 using the adjustment in R9-712.35 associated with the nearest hospital with which the freestanding emergency department shares an ownership interest.
- E. Services provided by an outpatient treatment center that does not meet the criteria in subsection B shall be reimbursed based on the non-hospital AHCCCS capped fee-for-service schedule.
- F. AHCCCS will not reimburse a hospital for services provided at a hospital-based FSED if the member is admitted directly from the hospital-based FSED to a hospital with an ownership interest in the hospital-based FSED. As provided in R9-22-712.60(B), payments made for the inpatient stay using the DRG methodology shall be the sole reimbursement.