



NOTICES OF PROPOSED RULEMAKING

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

A proposed rulemaking is filed by an agency upon completion and submittal of a Notice of Rulemaking Docket Opening. Often these two documents are filed at the same time and published in the same *Register* issue.

When an agency files a Notice of Proposed Rulemaking under the Administrative Procedure Act (APA), the notice is published in the *Register* within three weeks of filing. See the publication schedule in the back of each issue of the *Register* for more information.

Under the APA, an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 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 #10 for the close of record and information related to public hearings and oral comments.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ARIZONA LONG-TERM CARE SYSTEM

[R16-118]

PREAMBLE

- | | |
|--|--|
| 1. <u>Article, Part, or Section Affected (as applicable)</u>
R9-28-702 | <u>Rulemaking Action</u>
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. §§ 36-2903.01, 36-2903, 36-2932
Implementing statute: A.R.S. §§ 36-2999.52, 36-2999.54
- 3. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**
Notice of Rulemaking Docket Opening: 22 A.A.R. 2057, August 5, 2016 (*in this issue*).
- 4. The agency's contact person who can answer questions about the rulemaking:**
Name: James Maguire
Address: AHCCCS
Office of Administrative Legal Services
701 E. Jefferson St.
Phoenix, AZ 85034
Telephone: (602) 417-4232
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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**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 proposed rulemaking will amend the current rule to increase the amount of the nursing facility provider assessment charged for health care items and services provided by nursing facilities authorized by State Law ARS§36-2999.51 et seq. The statutory scheme requires the AHCCCS Administration to administer a provider assessment (also referred to as a quality assessment) on health care items and services provided by nursing facilities and to make supplemental payments to nursing facilities for covered Medicaid expenditures. As a result of the proposed rulemaking which will increase the dollar amount of the nursing facility assessment in R9-28-702, additional supplemental funding will be available to nursing facilities for covered Medicaid expenditures, thus supporting accessibility of critical health care services to vulnerable populations and enhancing the ability of nursing facilities to provide higher quality yet cost effective care to frail Arizona residents.



- 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:**

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

- 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:**

The Administration anticipates a minimal to moderate economic impact to individual qualifying nursing facilities. Under the statute, the amount of the assessment cannot exceed three and one-half percent of the net patient service revenue. The estimated increase in the total assessment for the fiscal year ending September 30, 2017 is \$8.1M. Ninety nine percent of the funds will be used as the non-federal share of supplemental payments to qualifying nursing facilities through the Medicaid program administered by AHCCCS. Because those funds will be matched with federal funds, the estimated increase in the total supplemental payments funded by this assessment for the fiscal year ending September 30, 2017 is \$16.1M.

- 9. 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 Legal Services
701 E. Jefferson St.
Phoenix, AZ 85034
Telephone: (602) 417-4232
Fax: (602) 253-9115
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 on or before July 18, 2016, and the proposed rulemaking will be published in the Arizona Administrative Register on or before August 5, 2016. Please send written or email comments to the above address which must be received by the close of the comment period, 5:00 p.m., September 6, 2016.

Date: 9/6/2016
Time: 1:00 p.m.
Location: AHCCCS
701 E. Jefferson
Phoenix, AZ 85034
Nature: Public Hearing

Date: 9/6/2016
Time: 1:00 p.m.
Location: ALTCS: Arizona Long-Term Care System
1010 N. Finance Center Dr., Suite 201
Tucson, AZ 85710
Nature: Public Hearing

Date: 9/6/2016
Time: 1:00 p.m.
Location: 2717 N. 4th St., Suite 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 are applicable.

- 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:**



42 Code of Federal Regulations section 433.68(e)(1) and (2) is applicable to the subject of this rulemaking. The proposed 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:

Not applicable

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

Not applicable

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ARIZONA LONG-TERM CARE SYSTEM**

ARTICLE 7. STANDARDS FOR PAYMENTS

Section

R9-28-702. Nursing Facility Assessment

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-28-702. Nursing Facility Assessment

- A. For purposes of R9-28-702 and R9-28-703, in addition to the definitions under A.R.S. § 36-2999.51, the following terms have the following meaning unless the context specifically requires another meaning:

“820 transaction” means the standard health care premium payments transaction required by 45 CFR 162.1702.

“Assessment year” means the 12 month period beginning October 1st each year

“Medicaid patient days” means patient days reported on the Nursing Care Institution Uniform Accounting Report (UAR) as attributable to AHCCCS and its contractors as the primary payor.

“Medicare days” means resident days where the Medicare program, a Medicare advantage or special needs plan, or the Medicare hospice program is the primary payor.

“Medicare patient days” means patient days reported on the Nursing Care Institution UAR as Skilled Medicare Patient Days or Part C/Advantage/Medicare Replacement Days.

“Nursing Care Institution UAR” means the Nursing Care Institution Uniform Accounting Report described by R9-11-204.

- B. Subject to Centers for Medicare and Medicaid Services (CMS) approval, effective October 1, 2012, nursing facilities shall be subject to a provider assessment payable on a quarterly basis.
- C. All nursing facilities licensed in the state of Arizona shall be subject to the provider assessment except for:
1. A continuing care retirement community,
 2. A facility with 58 or fewer beds, according to the Arizona Department of Health Services, Division of Licensing Services, Provider & Facility Database,
 3. A facility designated by the Arizona Department of Health Services as an Intermediate Care Facility for the Intellectually Disabled,
 4. A tribally owned or operated facility located on a reservation, or
 5. Arizona Veteran's Homes
- D. The Administration shall calculate the prospective nursing facility provider assessment for qualifying nursing facilities as follows:
1. In September of each year, the Administration shall obtain from the Arizona Department of Health Services the most recently published Nursing Care Institution UAR and the information required in subsection (C)(2). At the request of the Administration, a nursing facility shall provide the Administration with any additional information necessary to determine the assessment.
 2. The Administration shall use the information obtained under subsection (D)(1) to determine:
 - a. Each nursing facility's total annual Medicaid patient days,
 - b. Each nursing facility's total annual Medicare patient days,
 - c. Each nursing facility's total annual patient days,
 - d. The aggregate net patient service revenue of all assessed providers, and
 - e. The slope described under 42 CFR 433.68(e)(2).
 3. For each nursing facility, other than a nursing facility exempted in subsection (C) or described in subsection (D)(4), the provider assessment is calculated by multiplying the nursing facility's total annual patient days other than Medicare patient days by ~~\$40.50~~15.63.



4. For a nursing facility, other than a nursing facility exempted in subsection (C), with ~~the~~ a number of total annual Medicaid patient days greater than or equal to the number required to achieve a slope of at least 1 applying the uniformity tax waiver test described in 42 CFR 433.68(e)(2), the provider assessment is calculated by multiplying the nursing facility's total annual patient days, other than Medicare patient days, by ~~\$1.401.80~~.
5. For each assessment year the slope described under 42 CFR 433.68(e)(2) shall be recalculated.
6. The total annual assessment calculated under subsections (D)(3), (D)(4) and (D)(5), shall not exceed 3.5 percent of the aggregate net patient service revenue of all assessed providers as reported on the Nursing Care Institution UAR obtained under subsection (D)(1).
7. All calculations and determinations necessary for the provider assessment shall be based on information possessed by the Administration on or before November 1 of the assessment year.
8. The Administration shall forward the provider assessments for all assessed facilities to the Arizona Department of Revenue by no later than December 1 of the assessment year.
9. In the event a nursing facility closes during the assessment year, the nursing facility shall cease to be responsible for the portion of the assessment applied to the dates the nursing facility is not operating.
10. In the event a nursing facility begins operation during the assessment year, that facility will have no responsibility for the assessment until such time as the facility has submitted to the Arizona Department of Health Services the report required by R9-11-204(A) covering a full year of operation.
11. In the event a nursing facility has a change of ownership such that the facility remains open and the ownership of the facility changes, the assessment liability transfers with the change in ownership.