NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

PREAMBLE

1. Permission to proceed with this proposed rulemaking was granted under A.R.S. § 41-1039 by the governor on:

November 19, 2024

2. Article, Part, or Section Affected (as applicable) **Rulemaking Action**

R9-22-1001	Amend
R9-22-1003	Amend
R9-22-1005	Amend
R9-22-1006	Amend

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

Authorizing statute: A.R.S. §§ 36-2901 and 36-2903 (F)

Implementing statute: A.R.S. §§ 36-2903.01 (K) and 36-2915

4. Citations to all related notices published in the *Register* that pertain to the current record of the proposed rule:

Notice of Rulemaking Docket Opening: (volume #) A.A.R. (page #), Issue Date: (date published), Issue Number: (number), File number: (R2#-###)

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

Name:	Sladjana Kuzmanovic
Title:	Rules Analyst
Division:	AHCCCS Office of the General Counsel
Address:	801 E. Jefferson Street, MD 6200, Phoenix, AZ 85034
Telephone:	(602) 417-4232
Fax:	(602) 253-9115
Email:	AHCCCSRules@azahcccs.gov
Website:	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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking: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 rules outlined in Title 9, Chapter 22, Article 10 of the Arizona Administrative Code (A.A.C.) play a key role in supporting the operational framework and practices of the agency's first- and third-party liability recovery programs. These regulations are designed to ensure compliance with the principle that the Administration serves as the payer of last resort, except in circumstances explicitly provided otherwise by law. In situations where AHCCCS has paid a claim and subsequently identifies a liable third party, the agency is legally obligated to pursue recovery of the funds from that responsible third party. This process helps uphold the

financial integrity of the program by ensuring that other liable parties fulfill their obligations before Medicaid resources are utilized.

Although effective, this rulemaking initiative will introduce necessary changes to clarify and simplify these rules, ultimately making them more accessible and easier to understand for providers and contractors. Proposed changes include updating "Third Party Liability" definition and rules to state that Administration must pay the difference between capped fee-for-service and a contracted amount when a member is enrolled with a contractor. It also includes adding and further clarifying that when first or third party liability is found after reimbursement occurs, the Administration or contractor will require the provider or non-contracting provider to bill the appropriate party and resubmit their claim for an adjustment to the Administration or contractor. These proposed changes are meant for clarifying purposes and do not impose any additional burdens or costs to regulated persons. Substantive and procedural rights of members are not affected, nor are any of the programs of the Administration. These changes were approved by GRRC in a prior 5YRR.

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:

The Administration did not review or rely on any study for this rulemaking.

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

The revisions in this proposed rulemaking clarify the existing practice which is consistent with federal law. The small businesses, consumers, members, and providers are anticipated to experience nominal impact by the changes to the rule language since the outcome is expected to be budget neutral. It is anticipated that the private sector, including small businesses or political subdivisions, will be nominally impacted since the proposed rule language streamlines and clarifies the existing rules, including rules delineating the reimbursement process of certain third-party liability claims. The Administration, contractors, and providers will benefit because the changes provide clarification of when and how reimbursement must be made by AHCCCS, consistent with federal law. The promulgated rules represent the most cost-effective method of fulfilling AHCCCS' responsibilities while complying with applicable federal regulations.

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

Name: Sladjana Kuzmanovic

Title: Rules Analyst

Division: AHCCCS Office of the General Counsel

Address: 801 E. Jefferson Street, MD 6200, Phoenix, AZ 85034

Telephone: (602) 417-4232

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Website: www.azahcccs.gov

11. 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:

Written comments about this proposed rulemaking will be accepted in person at the address provided under Item #5, Monday through Friday from 8 a.m. to 5 p.m. except for state holidays. Comments will also be accepted via email at the email address provided under Item #5. Mailed written comments shall be postmarked within 30 days of this published notice.

An oral proceeding is scheduled on this proposed rulemaking.

Date: February 10, 2025

Time: 2:00 p.m.

Location: (meet.google.com/gvs-caej-kfb)

Nature: Public Hearing

Public comment period ends: February 10, 2025 at 5:00 p.m.

Close of record: February 10, 2025 at 5:00 p.m.

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:

There are not other matters prescribed by statute applicable specifically to the Administration or this specific rulemaking.

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:

The rule does not require the issuance of a regulatory permit. Therefore, a general permit is 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 rules are not more stringent than the 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.

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. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

ARTICLE 10. FIRST– AND THIRD–PARTY LIABILITY AND RECOVERIES

Section

ARTICLE 10. FIRST– AND THIRD–PARTY LIABILITY AND RECOVERIES

R9-22-1001. DEFINITIONS

In addition to the definitions in A.R.S. §§ 36-2901, 36-2923 and 9 A.A.C. 22, Article 1, the following definitions apply to this Article:

"Absent parent" means an individual who is absent from the home and is legally responsible for providing financial and/or medical support for a dependent child.

"Cost avoid" means to deny a claim and return the claim to the provider for a determination of the amount of first- or third-party liability.

"First-party liability" means the obligation of any insurance plan or other coverage obtained directly or indirectly by a member that provides benefits directly to the member to pay all or part of the expenses for medical services incurred by AHCCCS or a member.

"Third-party" means a person, entity, or program that is, or may be, liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or member.

"Third-party liability" means ~~any individual, entity, or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished to a member under a state plan~~the legal obligation of third parties (e.g. certain individuals, entities, insurers, or programs) to pay part or all of the expenditures for medical assistance furnished under a Medicaid state plan.

R9-22-1003. COST AVOIDANCE

A. The Administration's reimbursement responsibility.

1. The Administration shall pay no more than the difference between the Capped Fee-For-Service schedule and the amount of the third-party liability, unless Medicare is the third-party.
2. If Medicare is the third-party that is liable, the Administration shall pay the Medicare copayment, coinsurance, and deductible regardless of the Capped Fee-For-Service Schedule, as described under 9 A.A.C. 29, Article 3.
3. The Administration must pay the difference between capped fee-for-service and a contracted amount when a member is enrolled with a contractor.

B. The Contractor's reimbursement responsibility.

1. If the contract between the contractor and the provider does not state otherwise, a contractor shall pay no more than the difference between the contracted rate and the amount of the third-party liability.
2. If the provider does not have a contract with the contractor, a contractor shall pay no more than the difference between the Capped Fee-For-Service rate and the amount of the third-party liability.

C. The following parties shall take reasonable measures to identify potentially legally liable first- or third-party sources:

1. AHCCCS, the Administration, or a contractor;
2. A provider;
3. A noncontracting provider; and
4. A member.

D. Except as specified under subsection (E), the Administration or a contractor shall cost avoid a claim for AHCCCS covered services under Article 2 if the Administration or a contractor has established the probable existence of a liable party at the time the claim is filed. Establishing liability takes place when the Administration or the contractor receives confirmation that another party is legally responsible for payment of a health care service under Article 2.

E. The Administration or contractor shall pay the full amount of the claim according to the Capped-Fee-For-Service Schedule or the contracted rate as described under subsection (B), and then seek reimbursement from any liable parties if the claim is for:

1. Prenatal care for pregnant women,
2. Preventive pediatric services, including E.P.S.D.T. and administration of vaccines to children under the Vaccines for Children (VFC) program; or
3. Services covered by third-party liability that is derived from an absent parent whose obligation to pay support is being enforced by the Division of Child Support Enforcement.

R9-22-1005. COLLECTIONS

A. Parties that notify AHCCCS. A provider or noncontracting provider shall cooperate with AHCCCS by identifying all potential sources of first- or third-party liability and notify AHCCCS of these sources.

B. Parties that pursue collection or reimbursement. AHCCCS, a provider, or noncontracting provider shall pursue collection or reimbursement from all potential sources of first- or third-party liability.

C. First- or third-party liability is found after reimbursement occurs. Provider or noncontracting provider is required to bill the appropriate party and resubmit the claim for an adjustment to the Administration or contractor.

R9-22-1006. AHCCCS MONITORING RESPONSIBILITIES

A. AHCCCS shall monitor first- or third-party liability payments to a provider or noncontracting provider, which include but are not limited to payments by or for:

1. Private health insurance;
2. Employment-related disability and health insurance;
3. Long-term care insurance;
4. Other federal programs not excluded by statute from recovery;
5. Court ordered or non-court ordered medical support from an absent parent;
6. State worker's compensation;
7. Automobile insurance, including underinsured and uninsured motorists insurance;
8. Court judgment or settlement from a liability insurer including settlement proceeds placed in a trust;
9. First-party probate estate recovery;
10. ~~Adoption-related payment; or~~
11~~0~~. A tortfeasor.