NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 34. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - GRIEVANCE SYSTEM

PREAMBLE

1. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
R9-34-101	Amend
R9-34-102	Amend
R9-34-103	Amend
R9-34-104	Amend
R9-34-105	Amend
R9-34-106	Amend
R9-34-107	Amend
R9-34-108	Amend
R9-34-109	Amend
R9-34-110	Amend
R9-34-111	Amend
R9-34-112	Amend
R9-34-113	Amend
R9-34-114	Amend
R9-34-115	New
R9-34-116	New
R9-34-117	New
R9-34-118	New
R9-34-204	Amend
R9-34-205	Amend
R9-34-206	Amend
R9-34-207	Amend
R9-34-208	Amend
R9-34-209	Amend
R9-34-210	Amend
R9-34-211	Amend
R9-34-217	Amend
R9-34-219	Amend
R9-34-404	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. § 36-2903.01

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

3. 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: [to be filled in by SOS editor]

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

Name:	Sladjana Kuzmanovic
Address:	AHCCCS Office of the General Counsel
	801 E. Jefferson Street, MD 6200
	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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

A.R.S. § 36-2903.01 authorizes AHCCCS to establish procedures and timeframes for members filing grievance and appeals regarding their healthcare services and managed care plans in Arizona. AHCCCS Grievance System rules provide a structured process for handling grievances and serve as a mechanism utilized by AHCCCS to address and resolve complaints and concerns raised by its members regarding their healthcare services. It facilitates the resolution of disputes between AHCCCS members and their managed care plans, ensuring that concerns are addressed promptly and fairly. Through this system, AHCCCS upholds the rights of its members, improves the quality of care, and enhances overall satisfaction with healthcare services. However, the current structure outlined in these rules does not match some of the federal regulatory changes or provide true clarity to members and providers looking to utilize the system. AHCCCS plans to amend these rules to ensure they align with the federal regulatory changes, update cross-references, correct grammatical errors, and to make them more clear, concise and understandable as identified in recent five-year report submitted to Governor's Regulatory Review Council on February 29, 2024. The changes to be made will not increase the cost of regulatory compliance, increase a fee, or reduce the procedural rights of persons regulated, but reduce a burden due to outdated requirements without compromising health and safety. Failure to conduct this rulemaking will promote unnecessary utilization of resources, and the incurring of unnecessary costs.

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:

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

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:

There is no economic, small business, or consumer impact, other than the cost to the Administration to prepare the rule package because this rulemaking simply streamlines and clarifies the existing rules. AHCCCS Grievance System rules govern the rights of AHCCCS members to appeal agency and contractor actions, however no suggested changes will incur further costs by either AHCCCS or its members. AHCCCS is amending these rules to ensure they align with the federal regulatory changes, update cross-references, correct grammatical errors, and to make them more clear, concise and understandable. The proposed changes are the most cost-effective means of complying with regulations and statutes to protect members due process rights for grievances and appeals.

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

Name:	Sladjana Kuzmanovic
Address:	AHCCCS Office of the General Counsel 801 E. Jefferson Street, MD 6200 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 as of April 5, 2024. Please send written or email comments to the above address by the close of the comment period, 5:00 p.m., June 10, 2024.

Date:	May 28, 2024
Time:	2:00 p.m.
Location:	(meet.google.com/mmc-dszy-xhf)
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:

There are no 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 42 CFR 438 Subpart F.

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 business competitiveness analysis was submitted to the Administration.

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 34. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - GRIEVANCE SYSTEM

ARTICLE 1. ~~REQUEST FOR ELIGIBILITY HEARING~~APPEALS AND STATE FAIR HEARINGS

Sections

ARTICLE 2. APPEAL, GRIEVANCE, AND HEARING FOR AN ENROLLED PERSON

Sections

R9-34-219 ~~Enrollee's~~ Petitioner's Request for an Expedited State Fair Hearing

ARTICLE 4. CLAIM DISPUTE

Section

R9-34-404 Content of Claim Dispute

ARTICLE 1. ~~REQUEST FOR ELIGIBILITY HEARING~~APPEALS AND STATE FAIR HEARINGS

R9-34-101. Application of Chapter and Article

A. This ~~Article~~Chapter establishes the requirements and process for a petitioner to request an appeal, dispute, grievance, or State Fair Hearing. ~~regarding an adverse action affecting AHCCCS eligibility.~~ Except for the Adverse Benefit Determination in R9-34-102(B)(5), this Chapter does not apply to Adverse Benefit Determinations by the Arizona Department of Economic Security under 9 A.A.C. 22, Article 14.

B. This Article applies to appeals, disputes, grievances, and State Fair Hearing requests generally. It also applies, where specified, to appeals of eligibility determinations made by AHCCCS, including determinations for the aged, blind, or disabled (9 A.A.C. 22, Article 15), the Arizona Long Term Care System (9 A.A.C. 28), the Medicare Cost Sharing Program (9 A.A.C. 29), the Medicare Part D Program (9 A.A.C. 30), and adverse actions regarding premiums and copayments described in R9-34-102(B~~A~~)(5). Hearings on ~~these~~ appeals and disputes are conducted as described in this Chapter ~~Article~~, A.R.S. § 36-2903.01(B)(4) and the Arizona Administrative Procedures Act in A.R.S. Title 41, Chapter 6.

C. The Arizona Department of Economic Security conducts appeals of eligibility under the procedures in A.R.S. Title 6, Chapter 9 for those eligibility determinations made by the Department including:

1. When the request for a State Fair Hearing is made for an individual whose eligibility is determined using MAGI-based income,
2. When the request for a State Fair Hearing is made on behalf of more than one person in the same household where at least one person's eligibility is based on MAGI-based income,
3. When the request for State Fair Hearing of AHCCCS eligibility is made at or near the same time as a request for the administrative review of an eligibility determination arising from the same facts and circumstances for any other public assistance program administered by the Department of Economic Security.

R9-34-102. Definitions

The following definitions apply for purposes of this Chapter.

A. "Administrative dispute" means a dispute filed against AHCCCS under R9-34-107.

B. "Adverse action" means:

1. Adverse Benefit Determination,
2. Provider termination,
3. Provider suspension,

4. Denial of a request for reimbursement under R9-34-116(J), or

5. An action that qualifies as an "appealable agency action" under A.R.S. § 41-1092.

C~~**A.**~~"Adverse ~~action "~~Benefit Determination" ~~by AHCCCS~~ means:

1. Denial of eligibility,
2. Discontinuance of eligibility,
3. I ~~The i~~mposition of or increase in Arizona Long Term Care System (ALTCS) share of cost determined under ~~A.A.C.~~ R9-28-408 or R9-28-410,
4. An eligibility determination that the petitioner claims is beyond the established time-frame, ~~or~~
5. I~~The i~~mposition of or increase in a premium or copayment,~~.~~
6. Determination of a Children's Rehabilitative Services designation under A.A.C. Title 9, Chapter 22, Article 13,
7. An "action" by a contractor as defined in R9-34-202, or
8. An "action" by AHCCCS or a tribal contractor as defined in R9-34-302,
9. Denial, in whole or in part, of a payment for a service because the claim does not meet the definition of a clean claim at 42 C.F.R. § 447.45(b) is not an adverse benefit determination.

D~~**B.**~~ "AHCCCS" means the AHCCCS Administration as defined in A.R.S. § 36-2901.

E. "Appeal" means a request for review of an adverse action.

F. "Authorized Representative" holds the same role as defined in 42 C.F.R. § 435.923.

G. "Claim dispute" means a dispute involving a payment of a claim, denial of a claim, imposition of a sanction or reinsurance. Petitioners filing claim disputes must follow the requirements and process established in Article 4.

H. "Contractor" means contractor or program contractor as defined in A.R.S. § 36-2901, 36-2931, 36-2971 and 36-2981; managed care organizations, the Comprehensive Medical Dental Program (CMDP) in the Division of Child Safety (DCS); Crisis Response Network (CRN), and the Division of Developmental Disabilities (DDD) in the Department of Economic Security.

I.~~**C.**~~ "Day" means calendar day unless otherwise specified.

J.~~**D.**~~"Director" means the Director of the Arizona Health Care Cost Containment System Administration or designee.

K.~~**E.**~~"Director's Decision" means the final AHCCCS administrative decision under A.R.S. § 41-1092(6~~5~~).

L. "Enrollee" means a person eligible for AHCCCS under A.R.S. Title 36, Chapter 29, and who is enrolled with an AHCCCS contractor.

M. "FFS member" means a fee-for-service (FFS) member eligible for AHCCCS under A.R.S. Title 36, Chapter 29, and who is enrolled with AHCCCS on a FFS basis.

N.~~**F.**~~"Filed" means the date that the contractor or AHCCCS, whichever is applicable, receives the request as established by a date stamp on the request or other record of receipt. ~~means the date that AHCCCS receives a request for a State Fair Hearing as established by a date stamp on the request or other record of receipt.~~

O. "Grievance" means an expression of dissatisfaction about any matter other than an adverse action, administrative dispute, or claim dispute. Possible subjects for grievances include, but are not limited to, the

quality of care or services provided, and aspects of interpersonal relationships such as rudeness of a provider or employee or failure to respect the enrollee's or FFS member's rights. Enrollees filing grievances against contractors must follow the requirements and process established in Article 2. FFS members and/or persons enrolled in the American Indian Health Plan (AIHP) may file a grievance by calling the AHCCCS Office of the General Counsel.

P. "Mail" means sent via the United States Postal Service or electronic mail.

Q.~~G.~~ "Petitioner" means a person, entity, or an authorized representative entitled to file an appeal, administrative dispute, claim dispute or request for state fair hearing under this Chapter and does not include an enrollee or FFS member filing a grievance. ~~means applicant, member, or other representative who is described and discussed in A.A.C. R9-22-1501, R9-22-1704, R9-22-1903, R9-22-2004, R9-27-302, R9-28-401, R9-28-1303, R9-29-203, R9-31-302, R9-31-1702, or for an adverse action under subsection (A)(5), an applicant, member, or other representative under 9 A.A.C. 22, Article 14~~.

R. "Service" means a notice or decision is sent by personal delivery, fax, email or certified mail, return receipt requested, or by any other method reasonably expected to give actual notice to all petitioners. If a document is served on a petitioner, the petitioner's last address of record with AHCCCS shall be used and the service must comply with R2-19-108(f).

S. "Service authorization request" means a petitioner's request to AHCCCS (for a FFS petitioner) or to a contractor for the provision of a service.

T~~H~~. "State Fair Hearing" means an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10.

R9-34-103. Computation of Time

Computation of time begins on the day after the event that triggers the period and includes all calendar days, including Saturdays, Sundays, and legal holidays. For the purpose of member appeals, if the last day of the appeal period is a Saturday, Sunday, or a legal holiday, the period is extended until the next day that is not a Saturday, Sunday, or legal holiday. ~~**A.** Computation of time begins the day after the date on the Notice of Adverse Action and includes all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period is extended until the end of the next day that is not a weekend or a legal holiday.~~

~~**B.** The 30-day time-frame for filing a request for a State Fair Hearing begins with the date the petitioner receives the Notice of Adverse Action.~~

R9-34-104. Petitioner's Rights

A. AHCCCS or contractor shall give a petitioner the right to:

1. Examine at a reasonable time before the date of the hearing and during the hearing:
   a. The content of the case file;
   b. All documents and records to be used by AHCCCS or contractor at the hearing; and
2. Request copies, at the petitioner's expense, including copies of the case and/or appeal file, any documents or records considered during the appeal process, including medical records, and any documents or records

to be used at the hearing; if requested, the copies shall be provided to the petitioner as soon as possible and no later than three working days after the request, or three working days after payment, if payment is requested for the copies. If the request is made within three working days of the scheduled hearing, the contractor or AHCCCS shall make reasonable attempts to provide the documents prior to the hearing.

3. File an appeal.

~~AHCCCS shall allow a petitioner the right to:~~

~~1. A State Fair Hearing; and~~

~~2. Copies, at the petitioner's expense, of any relevant document not protected from disclosure by law.~~

R9-34-105. ~~Who May File~~Medical Assessments

If the State Fair Hearing involves medical issues such as those concerning a diagnosis, an examining or treating physician's report, or a disability determination, and if the Administrative Law Judge considers it necessary to have a medical assessment other than that of the individual involved in making the original decision, the Administrative Law Judge may order such a medical assessment to be provided by a registered or subcontracted provider at AHCCCS's or the contractor's expense. The written report of the medical assessment must be made part of the record. ~~A petitioner who requests a State Fair Hearing shall make the request according to this Article.~~

R9-34-106. ~~Requesting~~ Filing an Appeal or Requesting a State Fair Hearing

A. A petitioner may request a State Fair Hearing, or an expedited State Fair Hearing, under this Article ~~only~~ for an adverse action.

B. If petitioner appeals an "action" by a contractor as defined in R9-34-202, petitioner must follow the requirements and process established in Article 2.

C. If petitioner appeals an "action" by AHCCCS or a tribal contractor as defined in R9-34-302, petitioner must follow the requirements and process established in Article 3.

D. If petitioner appeals an adverse action that is not an "action" by a contractor as defined in R9-34-202 or an "action" by AHCCCS or a tribal contractor as defined in R9-34-302, petitioner

~~**B.** A petitioner~~ shall request a State Fair Hearing in writing with AHCCCS within 30 days after the petitioner receives notice of the adverse action.

E. The petitioner's request under R9-34-106(D) shall contain the case name, the adverse action taken by AHCCCS, and the reason for the State Fair Hearing.

F. AHCCCS shall mail a Notice of Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a request for a State Fair Hearing that is timely and contains the information listed in R9-34-106(E).

R9-34-107. ~~Time-frame for Requesting a State Fair Hearing~~ Filing a Dispute against AHCCCS

A. For a dispute against AHCCCS that is not a claim dispute under R9-34-402(B), a petitioner shall file an administrative dispute with AHCCCS no later than 60 days from the date of notification from AHCCCS. This includes but is not limited to sanctions imposed on contractors by AHCCCS, disputes involving an enrollee's or

FFS member's change of plan, and disputes involving electronic health record incentive payments and supplemental payments.

B. A petitioner shall file an administrative dispute with AHCCCS specifically requesting an appeal and identifying the basis for the appeal. AHCCCS shall:

1. Schedule the matter for hearing;
2. Schedule an informal settlement conference; or
3. Issue a notice of decision within 30 days unless a longer timeframe is agreed to by all parties.

C. AHCCCS's written Notice of Decision shall include:

1. The date of the decision,
2. The factual and legal basis for the decision,
3. The petitioner's right to request a State Fair Hearing under A.R.S. § 41-1092, et seq., and
4. The manner in which a petitioner is to file a State Fair Hearing request under A.R.S. § 41-1092, et seq.

D. A petitioner may request a State Fair Hearing regarding AHCCCS's Notice of Decision if:

1. A petitioner files a request for a State Fair Hearing with AHCCCS no later than 30 days after the date the petitioner receives AHCCCS's written Notice of Decision regarding the administrative dispute, or
2. AHCCCS does not render a written Notice of Decision regarding the administrative dispute within 30 days after the administrative dispute is filed, unless the parties have agreed to a later date, and the petitioner files a request for a State Fair Hearing within 30 days after the date that the Notice of Decision was sent.

E. AHCCCS shall send a notice of a State Fair Hearing under A.R.S. § 41-1092, et seq. if AHCCCS receives a timely request for a State Fair Hearing from the petitioner.

~~A petitioner shall request a State Fair Hearing in writing with AHCCCS within 30 days after the petitioner receives the Notice of Adverse Action.~~

R9-34-108. ~~Format and Contents of the Request for a State Fair Hearing~~ Requesting a State Fair Hearing for a Nursing Facility Transfer or Discharge

A. A resident of a Nursing Facility may request a State Fair Hearing, or an expedited State Fair Hearing, when a transfer or discharge notice is issued by a Nursing Facility.

B. Requests for hearings must be submitted in writing to AHCCCS, no later than 30 days from the date of the transfer or discharge notice issued under, 24 C.F.R. § 483.15(c).

C. The nursing home resident, or an authorized representative, with the resident's consent, may file the request for hearing.

D. If a nursing facility resident wants services to be continued pending a State Fair Hearing, the request to continue services shall be submitted in writing.

E. AHCCCS shall send a Notice of State Fair Hearing under A.R.S. § 41-1092.05 if a timely request for a State Fair Hearing is received.

F. If AHCCCS sends a Notice of State Fair Hearing under A.R.S. § 41-1092, et seq., a nursing facility resident shall send a written request for withdrawal to the Office of Administrative Hearings (OAH) if the nursing

facility resident withdraws his or her request for a State Fair Hearing.

G. AHCCCS shall send a Director**'**s Decision to the nursing facility resident no later than 30 days after OAH sends a copy of the Administrative Law Judge's recommended decision to AHCCCS and within 90 days after the date that the nursing facility resident filed the appeal, not including the number of days the nursing facility resident took to file for a State Fair Hearing, and days for continuances granted at the nursing facility resident's request.

~~A petitioner shall submit a written request for a State Fair Hearing to AHCCCS. The request shall contain the case name, the adverse action taken by AHCCCS, and the reason for the State Fair Hearing.~~

R9-34-109. ~~Notice of Hearing~~ Reversed Appeal Decision

A. If AHCCCS, contractor, or the Director's Decision reverses a decision to deny, limit, or delay services that were not furnished while the appeal was pending, AHCCCS or contractor shall authorize or provide the disputed services promptly, and as expeditiously as the petitioner's health condition requires.

B. If, through the appeal process, the contractor**,** or AHCCCS, or the Director's Decision reverses a decision to deny, terminate, reduce, or suspend authorization of services, and the petitioner received the disputed services while the appeal was pending, the contractor or AHCCCS shall process a claim for payment from the provider of these services in a manner consistent with the contractor's Notice of Decision, AHCCCS's Notice of Decision or the Director's Decision and applicable statutes, rules, policies, and contract terms. The contractor or AHCCCS shall not deny the petitioner's request for reimbursement on the same basis as the reversed decision or for lack of prior authorization. The contractor or AHCCCS shall allow the petitioner the longer of (1) the timeframe described under A.R.S. § 36-2904 or (2) 60 days from the date of decision to submit a clean claim to the contractor or AHCCCS unless the Director's Decision provides otherwise.

~~AHCCCS shall mail a Notice of Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a request for a State Fair Hearing that is timely and contains the information listed in R9-34-108.~~

R9-34-110. Denial of a Request for a State Fair Hearing

AHCCCS shall deny a request for a State Fair Hearing upon written determination by AHCCCS that:

1. The request for a State Fair Hearing is untimely;
2. The request for a State Fair Hearing is not for an adverse action, administrative dispute, or claim dispute as permitted under this Article;
3. The request for a State Fair Hearing is moot, as determined by AHCCCS, based on the factual circumstances of the case; ~~or~~
4. The sole issue presented is a federal or state law requiring an automatic change adversely affecting some or all applicants, enrollees, or FFS members; or~~.~~
5. The petitioner or contractor waives the right to a hearing.

R9-34-111. AHCCCS Time-frame for Resolution of a State Fair Hearing

In accordance with 42 C.F.R. § 431.244, AHCCCS shall mail a Director's Decision to the petitioner no later than 30 days after the date of the Administrative Law Judge's recommended decision and within 90 days after (1) the date that the petitioner filed the appeal under R9-34-106 (B) and (C), not including the number of days the petitioner took to subsequently file for a State Fair Hearing or (2) for all other State Fair Hearings, the date AHCCCS receives a request for a State Fair Hearing. The 90 days do ~~request for a State Fair Hearing~~ not include ~~ing~~ days for continuances granted at the petitioner's request.~~,~~ For expedited appeals pursuant to 42 C.F.R. § 438.410, AHCCCS must mail a Director's Decision pursuant to the timeliness requirements in 42 C.F.R. § 431.244.

R9-34-112. Withdrawal of a Request for a State Fair Hearing

A. AHCCCS shall accept a written request for withdrawal if the written request for withdrawal is received from the petitioner before AHCCCS mails a Notice of Hearing. ~~under R9-34-109~~.

B. If AHCCCS mailed a Notice of Hearing ~~under R9-34-109~~, the petitioner shall send a written request for withdrawal to the Office of Administrative Hearings (OAH).

R9-34-113. Motion for Rehearing or Review

Under A.R.S. § 41-1092.09, the Director shall grant a rehearing or review for any of the following reasons materially affecting a petitioner's rights:

1. Irregularity in the proceedings of a State Fair Hearing that deprived a petitioner of a fair hearing;
2. Misconduct of AHCCCS, Office of Administrative Hearings (OAH), or a party;
3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
4. The decision is the result of passion or prejudice;
5. The decision is not justified by the evidence or is contrary to law; or
6. Good cause is established for the nonappearance of a party at the hearing.

R9-34-114. AHCCCS Coverage During the State Fair Hearing Process

A. If a petitioner requests a State Fair Hearing because of an increase in the share-of-cost, premium, or copayment and the request is filed before the effective date of the increase, AHCCCS shall not enforce the increase until a Director's Decision is rendered that supports the increase.

B. If a petitioner files a request for a State Fair Hearing for a discontinuance action before the effective date of the discontinuance, the petitioner shall continue to receive AHCCCS coverage until a Director's Decision is rendered. A petitioner may waive coverage while the Director's Decision is pending.

C. A petitioner, eligible under 9 A.A.C. 22, Article 31, who requests AHCCCS coverage during the State Fair Hearing process, shall comply with the premium payment requirements under ~~A.A.C.~~ R9-31-1419.

D. A petitioner whose benefits are continued shall be financially liable for all fee-for-service and capitation payments made by AHCCCS during a period of ineligibility~~,~~ if a discontinuance decision is upheld under A.R.S. § 41-1092.08.

E. If a petitioner requests a hearing regarding the termination of family planning services under ~~A.A.C.~~ R9-22-1424 or the guaranteed enrollment period under 9 A.A.C. 22, Article 17, the petitioner shall not continue to be AHCCCS eligible after the end of the designated time period under A.R.S. § 36-2907.04 and 42 U.S.C. 1396a(e)(2). If the termination of family planning services is overturned, the applicable effective date of AHCCCS coverage shall be set forth in the Director's Decision.

F. If a denial of eligibility is overturned, the effective date of AHCCCS eligibility shall be set forth in the Director's Decision.

R9-34-115. Notice or Procedural Due Process Discrepancies

Allegations of deficiencies in a notice, or of due process issues arising from the appeals process shall be raised by the petitioner and addressed by the administrative law judge at an administrative hearing. If the petitioner does not raise these issues at hearing, they are waived. For purposes of this section, notice means a Notice of Adverse Benefit Determination or other notice of an adverse action.

R9-34-116. Direct Reimbursement of Petitioners

A. When an erroneous denial of eligibility is rescinded through the administrative appeals process, a petitioner may be entitled to reimbursement, in accordance with this rule, for expenditures made by or on behalf of the individual for covered services provided from the date of the erroneous denial of eligibility until the date of eligibility posting.

B. Reimbursement can only be issued if:

1. The initial Notice of Adverse Benefit Determination regarding denial of eligibility must have been:
   a. Rescinded by AHCCCS or the Department, or
   b. Reversed, set aside, or remanded through the administrative appeals process, including a decision by a court on judicial review of the Director's Decision.
2. As a result of the rescission or overturning of the initial eligibility determination, the petitioner must be found eligible, based on the application that was successfully appealed, either by:
   a. The unappealed Decision or
   b. The unappealed order of a court on judicial review of the Director's Decision or
   c. AHCCCS or the Department after it rescinds its initial Notice of Adverse Benefit Determination or following a remand through the administrative appeals process or a court on judicial review of the Director's Decision.

C. Request for petitioner reimbursement must be received by AHCCCS Office of the General Counsel at the address listed in the notice of rescission or Director's Decision.

D. Requests for petitioner reimbursement shall be denied if not received within 60 days of the notice of rescission or Director's Decision.

E. If the request does not include documentation necessary for AHCCCS to establish that the services were paid for by or on behalf of the petitioner, AHCCCS shall provide the petitioner with 10 days to provide the

documentation.

F. The petitioner will be reimbursed for services paid for by or on behalf of the petitioner if the services are medically necessary, covered services, notwithstanding that prior authorization for the services may not have been obtained or that the provider of services was or is not an AHCCCS registered provider. Once the reimbursement is approved by AHCCCS's Office of the General Counsel reimbursement will be made within 30 days from the date of approval.

G. The petitioner will not be reimbursed for services paid for by or on behalf of the petitioner if the services are the responsibility of a legally liable third party or are services that were used to qualify the petitioner for the Medical Expense Deduction program.

H. The petitioner will be reimbursed the lesser of the amount expended by or on behalf of the petitioner and or the AHCCCS capped fee-for-service rate.

I. AHCCCS will provide the petitioner with written notice of its decision on the direct reimbursement request within 60 days of the receipt of the request for direct reimbursement, or longer if agreed to by the parties.

J. A petitioner may appeal the denial of a request for reimbursement in the manner provided for in this Article.

R9-34-117. Discontinuance

A. AHCCCS shall provide a Notice of Adverse Benefit Determination no later than 10 days before the effective date of the discontinuance of eligibility.

B. Notwithstanding subsection A, AHCCCS may send the Notice of Adverse Benefit Determination no later than the effective date of the discontinuance if AHCCCS.

1. Receives a written statement confirming the petitioner's voluntary withdrawal from AHCCCS,
2. Receives information confirming the death of the petitioner,
3. Receives returned mail with no forwarding address from the post office and the petitioner's whereabouts are unknown,
4. Receives information confirming that the petitioner has been approved for Title XIX or Title XXI services outside the state of Arizona, or
5. Receives information that the petitioner is incarcerated.

C. The Notice of Adverse Benefit Determination shall contain the:

1. Name of the ineligible petitioner,
2. Effective date of the discontinuance,
3. Specific reason why the petitioner is discontinued,
4. Legal citations supporting the reason for the discontinuance,
5. Location where the petitioner can review the legal citations, and
6. Information regarding the petitioner's appeal and request for hearing rights.

R9-34-118. Effect of Enrollment with a Contractor

The future enrollment of a contractor's enrollee to another contractor and/or the enrollee's subsequent loss of

AHCCCS eligibility are not valid reasons to deny or limit an enrollee's service authorization request submitted to the contractor during the time period in which the enrollee was enrolled with that contractor. Contractors shall not take the position during the grievance and appeals process that a former enrollee's subsequent enrollment with another contractor or that enrollee's subsequent loss of AHCCCS eligibility are valid reasons for the prior contractor to deny or dismiss an appeal of the adverse benefit determination if the enrollee submitted the service authorization request to the prior contractor during a period of enrollment with the prior contractor. The prior contractor is required to substantiate that the denial or reduction of the service authorization request is based upon medical necessity, the exclusion of the service from the scope of AHCCCS covered services, and/or cost effectiveness. If the authorization decision of the prior contractor is overturned on appeal, the prior contractor is financially responsible for coverage of those services notwithstanding the enrollee's subsequent enrollment with a different contractor or the enrollee's subsequent loss of AHCCCS eligibility.

ARTICLE 2. APPEAL, GRIEVANCE, AND HEARING FOR AN ENROLLED PERSON

R9-34-204. Language, ~~and~~ Format, and Content of the Notice of Action

A. A contractor shall ensure that the Notice of Action is in writing and meets the following language and format requirements:

1. The Notice of Action shall be available in each non-English language spoken by a significant number or percentage of petitioners or potential petitioners in the contractor's geographic service area as established by contract.
2. The Notice of Action shall explain that free oral interpretation services are available to explain the Notice of Action for all non-English languages.
3. The format of the Notice of Action is available in alternative formats \ upon request of a petitioner.

B. A contractor shall ensure that the Notice of Action explains the following:

1. The action the contractor has taken or intends to take;
2. The factual reason and legal basis for the decision;
3. The petitioner's right to file an appeal with the contractor;
4. The procedures for exercising the rights specified in this Article;
5. The circumstances under which an expedited resolution is available and how to request it; and
6. The circumstances under which a petitioner has a right to have services continue pending resolution of the appeal, how to request that services be continued, and the circumstances under which the petitioner is liable for the costs of services.~~A contractor shall ensure that the Notice of Action is in writing and meets the following language and format requirements:~~

~~1. The Notice of Action shall be available in each non-English language spoken by a significant number or percentage of enrollees or potential enrollees in the contractor's geographic service area as established by contract.~~

~~2. The Notice of Action shall explain that free oral interpretation services are available to explain the Notice of Action for all non-English languages.~~

~~3. The format of the Notice of Action is easily understood and available in alternative formats, such as braille, large font, or enhanced audio, and in an appropriate manner that takes into consideration the special needs of an enrollee.~~

R9-34-205. ~~Content of the Notice of Action~~Repealed

~~A contractor shall ensure that the Notice of Action explains the following:~~

~~1. The action the contractor has taken or intends to take;~~

~~2. The reasons for the action;~~

~~3. The enrollee's right to file an appeal with the contractor;~~

~~4. The procedures for exercising the rights specified in this Article;~~

~~5. The circumstances under which an expedited resolution is available and how to request it; and~~

~~6. The circumstances under which an enrollee has a right to have services continue pending resolution of the appeal, how to request that services be continued, and the circumstances under which the enrollee is liable for the costs of services.~~

R9-34-206. ~~Contractor Notice of Action Time-frame for Service Authorization Requests~~Authorization

A. Contractor Notice of Adverse Benefit Determination:

1. For an authorization requested for services needed for a petitioner, the contractor shall make a standard authorization decision and send a Notice of Adverse Benefit Determination within 14 calendar days following the receipt of the petitioner's request.
2. For an expedited authorization decision in which the petitioner indicates or the contractor determines that following the time-frame in subsection (1) could seriously jeopardize the petitioner's life or health or ability to attain, maintain, or regain maximum function, the contractor shall make an expedited authorization decision and send the Notice of Adverse Benefit Determination as expeditiously as the petitioner's health condition requires, but not later than 72 hours after receipt of the request for service.
3. The contractor may extend the time-frame an additional 14 days if the petitioner requests an extension of the time-frame in subsection (1) or (2); or if the contractor needs additional information and the extension is in the best interest of the petitioner, the contractor shall extend the time-frame in subsection (A) or (B) up to an additional 14 days. If the contractor extends the time-frame, the contractor shall:
   a. Give the petitioner written notice of the reason for the decision to extend the time-frame and inform the petitioner of the right to file a grievance if the petitioner disagrees with the decision, and
   b. Issue and carry out the determination as expeditiously as the petitioner's health condition requires and no later than the date the extension expires.
4. For service authorization decisions not reached within the maximum time-frame, the authorization shall be considered denied on the date that the time-frame expires. And Oon that date, the contractor shall issue a Notice of Adverse Benefit Determination indicating that the contractor failed to make a decision within the indicated timeframe.

B. Contractor Notice of Adverse Benefit Determination for Time-frame for Service Termination, Suspension, or Reduction:

1. For termination, suspension, or reduction of a previously authorized AHCCCS covered service, a contractor shall send the Notice of Adverse Benefit Determination at least 10 days before the date of the action, except as provided in subsection (A)(2) or (A)(3).
2. The contractor may send the Notice of Adverse Benefit Determination no later than the date of action if:
   a. The contractor has factual information confirming the death of a petitioner;
   b. The contractor receives a clear written statement signed by the petitioner that the petitioner no longer wishes requests services or the petitioner gives information to the contractor that requires termination or reduction of services and indicates that the petitioner understands that this shall be the result of supplying that information;
   c. The petitioner has been admitted to a public institution where the petitioner is ineligible for services;
   d. The petitioner's whereabouts are unknown and the post office returns mail, directed to the petitioner, or to the contractor indicating no forwarding address; or
   e. The contractor establishes the fact that the petitioner has been accepted for Medicaid by another state.
3. The contractor may shorten the period of advance notice to five days before the date of action if the contractor has verified facts indicating probable fraud by the petitioner.
4. If the contractor denies payment to a petitioner, the contractor shall send the Notice of Adverse Benefit Determination to the petitioner at the time of the action affecting the claim.~~**A.** For an authorization decision, not covered under subsection (B), for a service requested on behalf of an enrollee, the contractor shall mail a Notice of Action within 14 calendar days following the receipt of the enrollee's request.~~

~~**B.** For an authorization request in which the provider indicates or the contractor determines that following the time-frame in subsection (A) could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function, the contractor shall make an expedited authorization decision and mail the Notice of Action as expeditiously as the enrollee's health condition requires, but not later than three working days after receipt of the request for service.~~

~~**C.** If the enrollee requests an extension of the time-frame in subsection (A) or (B), the contractor shall extend the time-frame up to an additional 14 days as requested by the enrollee.~~

~~**D.** If the contractor needs additional information and the extension is in the best interest of the enrollee, the contractor shall extend the time-frame in subsection (A) or (B) up to an additional 14 days. If the contractor extends the time-frame, the contractor shall:~~

~~1. Give the enrollee written notice of the reason for the decision to extend the time-frame and inform the enrollee of the right to file a grievance if the enrollee disagrees with the decision, and~~
~~2. Issue and carry out the determination as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.~~

~~**E.** For service authorization decisions not reached within the maximum time-frame in this Section, the authorization shall be considered denied on the date that the time-frame expires.~~

R9-34-207. Contractor Notice of Action Time-frame for Service Termination, Suspension, or Reduction

Contractor Notice of Adverse Benefit Determination for Time-frame for Service Termination, Suspension, or Reduction:

1. For termination, suspension, or reduction of a previously authorized AHCCCS covered service, a contractor shall send the Notice of Adverse Benefit Determination at least 10 days before the date of the action, except as provided in subsection (A)(2) or (A)(3).
2. The contractor may send the Notice of Adverse Benefit Determination no later than the date of action if:
   a. The contractor has factual information confirming the death of a petitioner;
   b. The contractor receives a clear written statement signed by the petitioner that the petitioner no longer wishes services or the petitioner gives information to the contractor that requires termination or reduction of services and indicates that the petitioner understands that this shall be the result of supplying that information;
   c. The petitioner has been admitted to a public institution where the petitioner is ineligible for services;
   d. The petitioner's whereabouts are unknown and the post office returns mail, directed to the petitioner, or to the contractor indicating no forwarding address; or
   e. The contractor establishes the fact that the petitioner has been accepted for Medicaid by another state.
3. The contractor may shorten the period of advance notice to five days before the date of action if the contractor has verified facts indicating probable fraud by the petitioner.
4. If the contractor denies payment to a petitioner, the contractor shall send the Notice of Adverse Benefit Determination to the petitioner at the time of the action affecting the claim.~~**A.** For termination, suspension, or reduction of previously authorized AHCCCS covered service, a contractor shall send the Notice of Action at least 10 days before the date of the action except as provided in subsection (B) or (C).~~

~~**B.** The contractor may mail the Notice of Action no later than the date of action if:~~

~~1. The contractor has factual information confirming the death of an enrollee;~~
~~2. The contractor receives a clear written statement signed by the enrollee that the enrollee no longer wishes services or the enrollee gives information to the contractor that requires termination or reduction of services and indicates that the enrollee understands that this shall be the result of supplying that information;~~
~~3. The enrollee is age 21 through 64 and has resided in an Institution for Mental Disease for more than 30 days;~~
~~4. The enrollee is an inmate of a public institution that does not receive federal financial participation;~~
~~5. The enrollee's whereabouts are unknown and the post office returns mail, directed to the enrollee, to the contractor indicating no forwarding address; or~~
~~6. The contractor establishes the fact that the enrollee has been accepted for Medicaid by another state.~~

~~**C.** The contractor may shorten the period of advance notice to five days before the date of action if the contractor has verified facts indicating probable fraud by the enrollee.~~

~~**D.** If the contractor denies payment to a provider, the contractor shall send the Notice of Action to the enrollee at~~

~~the time of the action affecting the claim.~~

R9-34-208. Who May File

A. An ~~enrollee~~petitioner shall file a grievance, an appeal, or request a State Fair Hearing according to this Article.

B. An authorized representative, including a provider, acting on behalf of the enrollee, with the enrollee's written consent, may file an appeal or request a State Fair Hearing on behalf of an enrollee. A provider is permitted to file a grievance with a contractor at the contractor's discretion.

C. The petitioner shall file a grievance directly with the contractor. The Administration shall refer to the contractor any grievance filed with the Administration. A petitioner is not entitled to a State Fair Hearing on a grievance.

R9-34-209. ~~Enrollee~~ Time-frame for Filing an Appeal or Grievance with the Contractor

A. ~~An enrollee~~ petitioner shall file an appeal either orally or in writing with the contractor within 60 days after the date of the Notice of Adverse Benefit Determination ~~Action~~.

B. The ~~enrollee~~ petitioner shall file a grievance either orally or in writing with the contractor.

C. The ~~enrollee~~ petitioner shall file a grievance directly with the contractor. AHCCCS shall refer to the contractor any grievance filed with AHCCCS. An enrollee is not entitled to a State Fair Hearing on a grievance.

R9-34-210. Contractor General Requirements for Grievance or Appeal Process

A. A contractor shall provide reasonable assistance to enrollees in completing forms and taking other procedural steps. Reasonable assistance includes, but is not limited to, providing interpreter services and toll-free numbers that have adequate TTY/TTD (teletypewriter/telecommunications device for the deaf, and text telephone) and interpreter capability.

B. The contractor shall acknowledge receipt of each grievance orally or in writing. The contractor shall acknowledge receipt of each appeal in writing.

C. The contractor shall ensure that the individual who makes a decision on a grievance or an appeal was not involved in any previous level of review or decision-making.

D. The contractor shall ensure that a health care professional who makes decisions on any of the following appeals or grievances has the appropriate clinical expertise in treating the enrollee's condition or disease:

1. An appeal of a denial that is based on lack of medical necessity,
2. A grievance regarding denial of expedited resolution of an appeal, or
3. A grievance or appeal that involves clinical issues.

E. A contractor shall complete the disposition of a grievance and provide oral or written notice to the petitioner of the contractor's decision within 90 days after the day the contractor receives the grievance.

R9-34-211. Contractor Special Requirements for the Appeal Process

A. A contractor shall treat an oral inquiry seeking to appeal an action as an appeal.

B. A resolution of an appeal by the contractor before a State Fair Hearing is an informal resolution under A.R.S. § 36-2903.01(B)(4).

C. The contractor shall provide a reasonable opportunity for ~~an enrollee~~ a petitioner to present evidence, and allegations of fact or law, in person and in writing. The contractor shall inform the enrollee of the limited time available ~~for this~~ to present evidence and allegations in the case of an expedited resolution.

D. The contractor shall ~~provide~~ allow the enrollee and representative the opportunity, before and during the appeal process, to examine the enrollee's case file, including medical records, documents, and records considered during the appeal process, not protected from disclosure by law.

E. The contractor shall include, as a party to the appeal, the enrollee or the legal representative of a deceased enrollee's estate.

R9-34-217. ~~Enrollee~~ Petitioner Request for a State Fair Hearing

A. An enrollee may request a State Fair Hearing on the contractor's resolution of an appeal. The request shall be in writing, submitted to and received by the contractor, no later than 30 days after the date the enrollee receives the Notice of Appeal Resolution.

B. If an enrollee wants services to be continued pending a State Fair Hearing, the request to continue services shall be in writing and comply with R9-34-224.

C. AHCCCS shall mail a Notice of Fair Hearing under A.R.S. § 41-1092.05 if a timely request for a State Fair Hearing is received.

R9-34-219. ~~Enrollee's~~ Petitioner's Request for an Expedited State Fair Hearing

An enrollee may request an expedited State Fair Hearing on the contractor's resolution of an expedited appeal. The request shall be in writing, submitted to and received by the contractor no later than 30 days after the enrollee receives the contractor's Notice of Appeal Resolution.

ARTICLE 4. CLAIM DISPUTE

Section

R9-34-404 Content of Claim Dispute

A claim dispute shall specify in detail the factual and legal basis for the claim dispute and the relief requested. AHCCCS shall deny a claim dispute if the factual or legal basis is not detailed. The time between any request from AHCCCS or the contractor for the factual and legal basis for the claim dispute and the response of the petitioner shall not be considered for purposes of determining compliance with any applicable deadlines.