NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM – ARIZONA LONG-TERM CARE SYSTEM

PREAMBLE

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

December 11, 2024

2. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
R9-28-503	Amend
R9-28-504	Amend
R9-28-505	Amend
R9-28-506	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. § 36-2932(M)

Implementing statute: A.R.S. §§ 36-2903, 36-2939, 36-2938

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: Sr. 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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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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking: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 R9-28, Article 5 set essential requirements for contractors and providers within the Arizona Long-Term Care System, promoting transparency, accountability, and high-quality care. These regulations ensure coverage for pre-existing conditions without exclusions, establish licensing standards for providers, and require contractors to coordinate care during enrollment transitions. Additionally, they define guidelines for compliance audits and quality management to uphold healthcare service standards. These updates are based on a Five-Year Review Report, which received approval from the Governor's Regulatory Review

Council on March 7, 2023.

Complete proposed revisions include:

R9-28-503(A) - Removing specific dates from the regulations incorporated by reference to maintain accuracy and relevance.

R9-28-503(B) – Replacing "ICF-MR" with "ICFIID" to comply with AHCCCS policy and federal regulations. Additionally, removing specific dates from the regulations incorporated by reference to maintain accuracy and relevance.

R9-28-503(C) - Replacing "ICF-MR" with "ICFIID" to comply with AHCCCS policy and federal regulations.

R9-28-504(B)(1) - Updating cross-reference R9-33-107 to R9-33-102 and removing cross-reference R6-6-714 as the rule has expired.

R9-28-504(B)(4) – Amending this rule to read: "A person providing a homemaker service shall meet the requirements specified in contract;" as these contracts do not always exist directly between the provider and AHCCCS.

R9-28-504(B)(5) – Amending this rule to read: "A person providing a personal care service shall meet the requirements specified in contract;" as these contracts do not always exist directly between the provider and AHCCCS.

R9-28-504(B)(7)(b) – Replacing "speech therapist" with "speech pathologist" to align with 42 CFR 440.100(c)(2) and 9 A.A.C. 16, Article 2.

R9-28-504(B)(10) – Updating cross-reference to 9 A.A.C. 8, Article 1.

R9-28-504(B)(12) – Updating cross-reference to 9 A.A.C. 25 for licensure requirement for emergency medical services.

R9-28-505 - Updating rule to state that the referenced hospitals may be accredited by "a national accreditation organization," aligning with Medicare standards, which allow accreditation by any national accreditation organization rather than being limited to the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). Additionally, removing specific dates from the regulations incorporated by reference to maintain accuracy and relevance.

R9-28-506(B)(6)(c) - Removing "or registered with AHCCCS as an independent provider;" since independent providers are no longer eligible to register with AHCCCS in this context.

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.

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 proposed rule revisions are expected to have little to no impact on small businesses, consumers, members, or providers, as they are intended solely to enhance clarity and understanding. These changes are purely clarifications of existing provisions and remain budget neutral, imposing no additional financial burdens on the economy, small businesses, or consumers beyond the Administration's current operational costs. They align the rules with the current AHCCCS policy, ensuring consistency while broadening their

scope rather than imposing restrictions.

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

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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: May 5, 2025

Time: 2:00 p.m.

Location: (meet.google.com/wxf-otub-eev)

Nature: Public Hearing

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

Close of record: May 5, 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 28. ARIZONA COST CONTAINMENT SYSTEM – ARIZONA LONG-TERM CARE SYSTEM

ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

Section

ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

R9-28-503. Licensure and Certification for Long-term Care Institutional Facilities

A. A nursing facility shall not provide services to a member unless the facility is licensed by Arizona Department of Health Services, Medicare- and Medicaid-certified, and meets the requirements in 42 CFR 442~~, as of October 1, 2004~~, and 42 CFR 483~~, as of October 1, 2004~~, incorporated by reference, on file with the Administration, and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments.

B. An ~~ICF-MR~~ ICFIID shall not provide services to a member unless the ~~ICF-MR~~ ICFIID is Medicaid-certified and meets the requirements in A.R.S. § 36-2939(B)(1) and 42 CFR 442, Subpart C~~, as of October 1, 2004~~, and 42 CFR 483~~, as of October 1, 2004~~, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments.

C. A nursing facility or ~~ICF-MR~~ ICFIID that provides services to a member shall register as a provider with the Administration to receive reimbursement. The Administration shall not register a provider unless the provider meets the licensure and certification requirements of subsection (A) or (B).

R9-28-504. Standards of Participation, Licensure, and Certification for HCBS Providers

A. A noninstitutional long-term care provider shall not register with the Administration unless the provider meets the requirements of the Arizona Department of Health Services' rules for licensure, if applicable.

B. Additional qualifications to provide services to a member:

1. A community residential setting and a group home for a person with developmental disabilities shall be licensed by the appropriate regulatory agency of the state as described in A.A.C. ~~R9-33-107 and A.A.C. R6-6-714~~ R9-33-102;
2. An adult foster care home shall be certified or licensed under 9 A.A.C. 10;
3. A home health agency shall be Medicare-certified and licensed under 9 A.A.C. 10;
4. A person providing a homemaker service shall meet the requirements specified in ~~the~~ contract ~~between the person and the Administration~~;
5. A person providing a personal care service shall meet the requirements specified in ~~the~~ contract ~~between the person and the Administration~~;
6. An adult day health care provider shall be licensed under 9 A.A.C. 10;
7. A therapy provider shall meet the following requirements:
   a. A physical therapy provider shall meet the requirements in 4 A.A.C. 24;
   b. A speech ~~therapist~~ pathologist provider shall meet the applicable requirements under 9 A.A.C. 16, Article 2.
   c. An occupational therapy provider shall meet the requirements in 4 A.A.C. 43; and
   d. A respiratory therapy provider shall meet the requirements in 4 A.A.C. 45;
8. A respite provider shall meet the requirements specified in contract;
9. A hospice provider shall be Medicare-certified and licensed under 9 A.A.C. 10;
10. A provider of home-delivered meal service shall comply with the requirements in 9 A.A.C. ~~8~~ 1;
11. A provider of non-emergency transportation shall be licensed by the Arizona Department of Transportation, Motor Vehicle Division;
12. A provider of emergency transportation shall meet the licensure requirements in 9 A.A.C. ~~13~~ 25;

13. A day care provider for the developmentally disabled under A.R.S. § 36-2939 shall meet the licensure requirements in 6 A.A.C. 6;
14. A habilitation provider shall meet the requirements in A.A.C. R6-6-1523 or the therapy requirements in this Section;
15. A service provider, other than a provider specified in subsections (B)(1) through (B)(14), approved by the Director shall meet the requirements specified in a program contractor's contract with the Administration;
16. A behavioral health provider shall have all applicable state licenses or certifications and meet the service specifications in A.A.C. R9-22-1205; and
17. An assisted living home or a residential unit shall meet the requirements as defined in A.R.S. § 36-401 and as authorized in A.R.S. § 36-2939.

R9-28-505. Standards, Licensure, and Certification for Providers of Hospital and Medical Services

A provider shall not provide hospital services to a member unless the hospital is licensed by the Arizona Department of Health Services, and meets the requirements in 42 CFR 441 and 482~~, as of October 1, 2004~~, and 42 CFR 456, Subpart C~~, as of October 1, 2004~~, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation contains no future editions or amendments. An Indian Health Service (IHS) hospital and a Veterans Administration hospital shall not provide services to a member unless accredited by ~~the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).~~ a national accreditation organization.

R9-28-506. Requirements for Spouse as Paid Caregiver

A. For purposes of this Section, the following definitions apply:
1. "Extraordinary care" means care that exceeds the range of activities that a spouse would ordinarily perform in the household on behalf of the ALTCS member if the member did not have a disability or chronic illness, and that is necessary to ensure the health and welfare of the member and avoid institutionalization.
2. "Personal care or similar services" means assistance provided to an ALTCS member with a disability or chronic illness to enable the member to perform Activities of Daily Living (ADL) or Instrumental Activities of Daily Living (IADL) that the member would normally perform for himself or herself if the member did not have a disability or chronic illness. Assistance may involve performing a personal care task for the member or cuing the member so that the member performs the task for himself or herself.

B. As authorized by the Section 1115 Waiver, a member may choose to have personal care or similar services provided by the member's spouse as a paid caregiver if the following conditions and limitations are met:
1. The member resides in his or her own home;
2. The Administration or a Program Contractor offers the member the choice of a provider of personal care or similar services other than the member's spouse;
3. The personal care or similar services is described in the member's plan of care prepared by the member's case manager;
4. The case manager records at least annually in the member's plan of care the member's choice to have personal care or similar services provided by the member's spouse as a paid caregiver;
5. The personal care or similar services provided by the spouse are extraordinary care;
6. The spouse is one of the following:
   a. Employed by a provider that subcontracts with the member's Program Contractor;

b. If the member is developmentally disabled, the spouse is either employed by a provider that subcontracts with the member's Program Contractor, or registered with AHCCCS as an independent provider; or

c. If the member is a Native American enrolled in FFS, the spouse is ~~either~~ employed by an AHCCCS registered provider ~~or registered with AHCCCS as an independent provider~~;

7. The spouse meets the training and other qualifications that apply to other providers of personal care or similar services registered with AHCCCS;

8. The Program Contractor does not pay a spouse providing personal care or similar services at a rate that exceeds the rate that would be paid to a provider of personal care or similar services who is not a spouse and the Administration does not pay a spouse providing personal care or similar services at a rate that exceeds the capped fee-for-service payment for personal care or similar services; and

9. A spouse providing personal care or similar services as a paid caregiver is not paid for more than 40 hours of services in a seven-day period.

C. For a member who elects to have the member's spouse provide personal care or similar services as a paid caregiver, personal care or similar services in excess of 40 hours in a seven-day period are not covered. If a spouse elects to provide less than the hours authorized by the Administration or Program Contractor, the remaining hours of medically necessary personal care or similar services may be provided by another personal caregiver, but the total hours of care provided by the spouse and any other personal caregiver shall not exceed 40 hours in a seven-day period.

D. By electing to have the member's spouse provide personal care and similar services as a paid caregiver, the member is not precluded from receiving medically necessary, cost effective home and community based services other than personal care or similar services.