

## **NOTICE OF FINAL EXEMPT RULEMAKING**

## **TITLE 9. HEALTH SERVICES**

# **CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**

## **ADMINISTRATION**

## **PREAMBLE**

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

R9-22-730 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. § 36-2901.08

Implementing statute: A.R.S. § 36-2901.08

Statute authorizing the exemption: A.R.S. § 41-1005(A)(31)

**3. The effective date of the rule and the agency's reason for selecting the effective date:**

The Administration is selecting an effective date of July 1, 2017, so that the invoices for the new rates will be available on or before July 15, 2017 or upon approval by CMS, whichever is later.

**4. A list of all notices published in the Register as specified in R1-1-409(A) that pertain to the record of the except rulemaking:**

22 A.A.R. 2051 August 5, 2016

23 A.A.R. 1633 June 16, 2017

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

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**6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**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. § 36-2901.08 authorizes the Administration to establish, administer and collect an assessment on hospital revenues, discharges or bed days for funding a portion of the nonfederal share of the costs incurred beginning January 1, 2014, associated with eligible persons added to the program by A.R.S. §§ 36-2901.01 and 36-2901.07. It is the Agency's objective to assess only so much as is necessary to meet the estimated costs associated with the projected populations referenced in the statute. As such, it is necessary for the Administration to adjust the assessment from time to time as the Administration updates its estimate of the number of eligible persons and projected cost associated with coverage for those persons. The amendment updates the figures to be used as of July 1, 2017 for collecting the assessment from hospitals.

At the assessment rates in the current rule, the Administration estimates that it would collect \$265 million over the course of a state fiscal year. The amendment adjusts the assessment rates such that the Administration anticipates the collection of \$290 million for the State Fiscal Year ending June 30, 2018. This amount corresponds to an amount slightly less than the non-federal funds estimated to be necessary to cover the cost of providing care to the 430,000 eligible individuals described in A.R.S. §§ 36-2901.01 (A) for State Fiscal year ending June 30, 2018.

As required by A.R.S. 36-2901.08(B), the assessment has been established in a manner consistent with federal regulations at 42 C.F.R. Part 433 Subpart B so that the assessment does not cause a reduction in federal financial participation.

**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:**

No studies were conducted relevant to the rule.

**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 summary of the economic, small business, and consumer impact, if applicable:**

The Administration estimates that \$290 million will be necessary to be collected from Arizona hospitals to fund the cost required by statute for State Fiscal Year (SFY) 2018 ending June 30, 2018. The assessment amount currently in rule reflects the amount needed in SFY 2017 to cover the estimated cost of care, approximately \$265 million. The amendment adjusts the rates upward to reflect the projected need of \$290 million for SFY 2018.

The AHCCCS program is jointly funded by the State and the federal government through the Medicaid program. Depending on the eligibility category of the individual, the federal government provides between two-thirds and 100% of the cost of care for persons described in A.R.S. § 36-2901.08(A). The Administration will use the amounts collected from the assessment combined with the federal financial participation to fund the cost of health care coverage for an estimated 430,000 persons described in A.R.S. § 36-2901.08(A) through direct payments to health care providers and capitation payments to managed care organizations that, in turn, make payments to health care providers that render care to AHCCCS members. Many of the providers of that medical care are considered small businesses located in Arizona.

A.R.S. § 36-2901.08 prohibits the assessed hospitals from passing the cost of the assessment on to patients or third parties who pay for care in the hospital. In the aggregate, the Administration expects to return millions more in SFY 2018 in incremental payments for hospital services than will be collected through the assessment. Along with a copy of this final exempt rule making, the Administration has posted to its website information regarding the fiscal impact of this amendment to hospitals.

**10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):**

No changes were made between the proposed rulemaking and the final exempt rulemaking.

**11. The time, place, An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:**

No comments from the public were received regarding the proposed rulemaking.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but are not limited to:**

No other matters have been prescribed.

**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:**

The rulemaking must be established consistent with 42 CFR Part 433 Subpart B. The 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:**

No analysis was submitted.

**13. A list of any incorporated by reference material and its location in the rules:**

None

**14. Whether the rule was previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency rule and the exempt rulemaking packages:**

Not applicable

**15. The full text of the rules follows:**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
ADMINISTRATION**

**ARTICLE 7. STANDARDS FOR PAYMENTS**

Section

R9-22-730 Hospital Assessment

## **ARTICLE 7. STANDARDS FOR PAYMENTS**

### **R9-22-730. Hospital Assessment**

- A.** For purposes of this Section, the following terms are defined as provided below unless the context specifically requires another meaning:
1. “2011 Medicare Cost Report” means:
    - a. The Medicare Cost Report for the hospital fiscal year ending in calendar year 2011 as reported in the CMS Healthcare Provider Cost Reporting Information System (HCRIS) release dated December 31, 2012; or
    - b. For hospitals not included in that CMS HCRIS report, the “as filed” Medicare Cost Report for the hospital fiscal year ending in calendar year 2011 submitted by the hospital to the Administration.
  2. “2011 Uniform Accounting Report” means the Uniform Accounting Report submitted to the Arizona Department of Health Services as of December 19, 2012.
  3. “2012 Uniform Accounting Report” means the Uniform Accounting Report submitted to the Arizona Department of Health Services as of August 2, 2013.
  4. “Quarter” means the three month period beginning January 1, April 1, July 1, and October 1 of each year.
- B.** Beginning January 1, 2014, for each Arizona licensed hospital not excluded under subsection (I) shall be subject to an assessment payable on a quarterly basis. The assessment shall be levied against the legal owner of each hospital as of the first day of the quarter, and except as otherwise required by subsections (D), (E) and (F). For the period beginning July 1, 2016 July 1, 2017, the assessment shall be calculated by multiplying the number of discharges reported on the hospital’s 2011 Medicare Cost Report, excluding discharges reported on the Medicare Cost Report as “Other Long Term Care Discharges” by the following rates based on the hospital’s peer group:
1. ~~\$440.00~~ \$483.00 per discharge for hospitals located in a county with a population less than 500,000 that are designated as type: hospital, subtype: short-term.
  2. ~~\$440.00~~ \$483.00 per discharge for hospitals designated as type: hospital, subtype: critical access hospital.

3. ~~\$110.00 \$120.75~~ per discharge for hospitals designated as type: hospital, subtype: long term.
  4. ~~\$110.00 \$120.75~~ per discharge for hospitals designated as type: hospital, subtype: psychiatric, that reported 2,500 or more discharges on the 2011 Medicare Cost Report.
  5. ~~\$352.00 \$386.50~~ per discharge for hospitals designated as type: hospital, subtype: short- term with 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2012 Uniform Accounting Report.
  6. ~~\$396.00 \$434.75~~ per discharge for hospitals designated as type: hospital, subtype: short- term with at least 10% but less than 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2012 Uniform Accounting Report.
  7. ~~\$440.00\$483.00~~ per discharge for hospitals designated as type: hospital, subtype: short- term not included in another peer group.
- C. Peer groups for the four quarters beginning July 1 of each year are established based on hospital license type and subtype designated in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website ~~April 1, 2016~~April 1, 2017.
- D. Notwithstanding subsection (B), psychiatric discharges from a hospital that reported having a psychiatric sub-provider in the hospital's 2011 Medicare Cost Report, are assessed a rate of ~~\$110.00\$120.75~~ for each discharge from the psychiatric sub-provider as reported in the 2011 Medicare Cost Report. All discharges other than those reported as discharges from the psychiatric sub-provider are assessed at the rate required by subsection (B).
- E. Notwithstanding subsection (B), rehabilitative discharges from a hospital that reported having a rehabilitative sub-provider in the hospital's 2011 Medicare Cost Report, are assessed a rate of \$0 for each discharge from the rehabilitative sub-provider as reported in the 2011 Medicare Cost Report. All discharges other than those reported as discharges from the rehabilitative sub-provider are assessed at the rate required by subsection (B).
- F. Notwithstanding subsection (B), for any hospital that reported more than ~~28,800~~28,200 discharges on the hospital's 2011 Medicare Cost Report, discharges

in excess of ~~28,800~~<sup>28,200</sup> are assessed a rate of \$44.00~~\$48.25~~ for each discharge in excess of ~~28,800~~<sup>28,200</sup>. The initial ~~28,800~~<sup>28,200</sup> discharges are assessed at the rate required by subsection (B).

- G.** Assessment notice. On or before the 15th day of the first month of the quarter or upon CMS approval, whichever is later, the Administration shall send to each hospital a notification that the assessment invoice is available to be viewed on a secure website. The invoice shall include the hospital's peer group assignment and the assessment due for the quarter.
- H.** Assessment due date. The assessment must be received by the Administration no later than:
  - 1. The 15<sup>th</sup> day of the second month of the quarter or
  - 2. In the event CMS approves the assessment after the 15<sup>th</sup> day of the first month of the quarter, 30 days after notification by the Administration that the assessment invoice is available.
- I.** Excluded hospitals. The following hospitals are excluded from the assessment based on the hospital's 2011 Medicare Cost Report and Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for ~~April 1, 2017~~<sup>April 1, 2016</sup>:
  - 1. Hospitals owned and operated by the state, the United States, or an Indian tribe.
  - 2. Hospitals designated as type: hospital, subtype: short-term that have a license number beginning "SH".
  - 3. Hospitals designated as type: hospital, subtype: psychiatric that reported fewer than 2,500 discharges on the 2011 Medicare Cost Report.
  - 4. Hospitals designated as type: hospital, subtype: rehabilitation.
  - 5. Hospitals designated as type: hospital, subtype: children's.
  - 6. Hospitals designated as type: med-hospital, subtype: special hospitals.
  - 7. Hospitals designated as type: hospital, subtype: short-term located in a city with a population greater than one million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2011 Medicare Cost Report are reimbursed by Medicare.
- J.** New hospitals. For hospitals that did not file a 2011 Medicare Cost Report because of the date the hospital began operations:

1. If the hospital was open on the April 1 preceding the July assessment start date, the hospital assessment will begin on July 1 following the date the hospital began operating.
2. If the hospital began operating between April 2 and June 30, the assessment will begin on July 1 of the following calendar year.
3. A hospital is not considered a new hospital based on a change in ownership.
4. Until the first full year of data is available, the assessment will be based on the annualized number of discharges from the date hospital operations began through April 30 preceding the July assessment start date. The hospital shall submit the discharge data and all other data requested by the Administration necessary to determine the appropriate assessment to the Administration no later than May 15 preceding the assessment start date for the new hospitals. Thereafter, the assessment will be based on the discharges reported in the hospital's first Medicare Cost Report and Uniform Accounting Report which includes 12 months worth of data; however, when a new hospital shares a Medicare Identification Number with an existing hospital, the assessment amount will be based on self reported data from the new hospital instead of the Medicare Cost Report. The data shall include the number of discharges and all other data requested by the Administration necessary to determine the appropriate assessment. No later than August 15, 2017, new hospitals shall also submit to the Administration discharge data and all other data requested by the Administration necessary to determine the appropriate assessment beginning July 1, 2018.

5. For hospitals providing self-reported data:

- a. Psychiatric discharges will be annualized to determine if subsections (B)(4) or (I)(3) apply to the assessment mount.
- b. Discharges will be annualized to determine if subsection (F) applies to the assessment amount.

**K. Changes of ownership.** The parties to a change of ownership shall promptly provide written notice to the Administration of a change of ownership and any agreement regarding the payment of the assessment. The assessed amount will continue at the same amount applied to the prior owner. Assessments are the responsibility of the owner of record as of the first day of the quarter; however, this rule is not intended to prohibit the parties to a change of ownership from entering into an agreement for a new

owner to assume the assessment responsibility of the owner of record as of the first day of the prior quarter.

- L. Hospital closures.** Hospitals that close shall pay a proportion of the quarterly assessment equal to that portion of the quarter during which the hospital operated.
- M. Required information.** For any hospital that has not filed a 2011 Medicare Cost report, or if the 2011 Medicare Cost report does not include the reliable information sufficient for the Administration to calculate the assessment, the Administration shall use data reported on the 2011 Uniform Accounting Report filed by the hospital in place of the 2011 Medicare Cost report to calculate the assessment. If the 2011 Uniform Accounting Report filed by the hospital does not include reliable information sufficient for the Administration to calculate the assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2011 Medicare Cost report to calculate the assessment.
- N.** The Administration will review and update as necessary rates and peer groups periodically to ensure the assessment is sufficient to fund the state match obligation to cover the cost of the populations as specified in 36-2901.08.
- O. Enforcement.** If a hospital does not comply with this section, the director may suspend or revoke the hospital's provider agreement. If the hospital does not comply within 180 days after the hospital's provider agreement is suspended or revoked, the director shall notify the director of the Department of Health Services who shall suspend or revoke the hospital's license.