

**NOTICE OF PROPOSED 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:**

R9-22-1001	Amend
R9-22-1002	Amend
R9-22-1003	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, 36-2903(F), 36-2903.01 (K), and 36-2915.

Implementing statute: A.R.S. §§ 36-2901, 36-2903(F), 36-2903.01 (K), and 36-2915.

**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: Mariaelena Ugarte

Address: AHCCCS

Office of Administrative Legal Services

701 E. Jefferson, Mail Drop 6200

Phoenix, AZ 85034

Telephone: (602) 417-4693

Fax: (602) 253-9115

E-mail: AHCCCSRules@azahcccs.gov

Web site: www.azahcccs.gov

**5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

The Administration is conducting a rule-making necessary to conform AHCCCS rules to federal requirements regarding the obligation of health care providers to bill other insurance (when it is known to exist) before billing AHCCCS. With some exceptions, providers must bill legally liable third parties (like private insurance) before billing AHCCCS. However, federal regulations state that in certain circumstances – such services provided to children and pregnant women – AHCCCS must pay the provider then AHCCCS or its contractors must seek reimbursement from the third party. In addition, there are a few federal exception to the general rule that AHCCCS is the payor of last resort; for example, AHCCCS must assume primary responsibility for payment for services covered through the Indian Health Service or medical services that are provided through schools under the federal Individuals with Disabilities Education Act.

**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:**

A study was not relied upon 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:**

The Administration anticipates a minimal economic impact on health plans since the contractors will have the payment responsibility to pay the claim upfront and then pursue payment by the primary insurer for prenatal, preventive pediatric and when a third party insurance is provided by an absent parent. The provider will benefit from this change since the claim related to prenatal, preventive pediatric and third party insurance provided by an absent parent will not be denied and paid when processed if the claim meets timeliness and medically necessary requirements.

Minimal = \$1 - \$1M

Moderate = \$1M - \$10M

Maximum = \$10M - on up

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

Name: Mariaelena Ugarte

Address: AHCCCS

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701 E. Jefferson, Mail Drop 6200

Phoenix, AZ 85034

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**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 the week of September 22, 2014. Please send written or email comments to the above address by the close of the comment period, 5:00 p.m., November 10, 2014.

Date: November 10, 2014

Time: 11:00 a.m.

Location: AHCCCS

701 East Jefferson

Phoenix, AZ 85034

Nature: Public Hearing

Date: November 10, 2014

Time: 11:00 a.m.

Location: ALTCS: Arizona Long-Term Care System  
1010 N. Finance Center Dr, Suite 201  
Tucson, AZ 85710

Nature: Public Hearing

Date: November 10, 2014

Time: 11:00 a.m.

Location: 2717 N. 4th St. STE 130  
Flagstaff, AZ 86004

Nature: Public Hearing

**11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

No other matters 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 proposed rule is not more stringent than the relevant federal laws referenced below. In part, these laws specify that Title XIX is the payor of last resort, except under limited circumstances, that all reasonable measures be taken to ascertain the legal liability of third parties, that coordination of benefits be implemented, and that the AHCCCS shall make payment for specified services without regard to the liability of a third party such that reimbursement from the third party will take place after payment to the provider. Thus, the Administration is promulgating rule to conform third party liability and coordination of benefit requirements in Article 10 to federal law, describing those entities which are the secondary payor to AHCCCS such as Indian Health Services and Tribal 638 facilities and the Arizona Early Intervention Program. In addition, these rules clarify specific services for which AHCCCS and its Contractors shall “pay and chase” the claim rather than “cost avoid” the claim, including prenatal care for pregnant women and preventive pediatric care.

Federal laws that describe Title XIX coordination of benefit requirement and the exceptions to cost avoidance of claims are found in 42 U.S.C. 1396a(a)(25), 42 CFR 433.139.

The following federal laws identify the exceptions to Title XIX as the payor of last resort: 42 CFR 431.110 for IHS; 34 CFR 303.510(c) for the Arizona Early Intervention Program; 34 CFR 300.154 for local educational agencies providing services under the Individuals with Disabilities Education Act (IDEA); 42 USC 300ff-15(a)(6); 300ff-27(b)(7)(F); 300ff-64(f)(1); and 300ff-71(i) for grants under the HIV Health Care Services Program and 45 CFR 400.94 for refugee medical assistance programs..

**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.

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

None

**13. 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

R9-22-1001. Definitions

R9-22-1002. General Provisions

R9-22-1003. Cost Avoidance



## 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.

### R9-22-1002. General Provisions

AHCCCS is the payor of last resort unless specifically prohibited by applicable state or federal law. ~~Entities that pay before AHCCCS include but are not limited to~~ AHCCCS is not the payor of last resort when the following entities are the third-party:

1. Indian Health Services (IHS/638), contract health,
2. Title IV-E,
3. Arizona Early Intervention Program (AZEIP), ~~and~~
4. ~~Contract health.~~
4. Local educational agencies providing services under the Individuals with Disabilities Education Act under 34 CFR Part 300,
5. Entities and contractors of entities providing services under grants awarded as part of the HIV Health Care Services Program under 42 USC 300ff et seq., and
6. The Arizona Refugee Resettlement Program operated under 45 CFR Part 400, Subpart G.

### **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 Chapter 29, Article 3.

#### **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 requirement to cost avoid applies to all AHCCCS covered services under Article 2 of this Chapter, unless otherwise specified in this Section.~~ 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.

**D.E.** ~~When the Administration or a contractor determines that a third party may be liable for services provided, the~~ 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, when if the claim is for:

~~1. The claim is for labor and delivery and postpartum care; or~~

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

~~2.3. The liability is from an absent parent, and the claim is for prenatal care or EPSDT services. 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.~~