

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

ARIZONA LONG TERM CARE SYSTEM

PREAMBLE

1. Article, Part, or Section Affected (as applicable)

R9-28-702

Rulemaking Action:

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, 36-2903, 36-2932

Implementing statute: A.R.S. §§ 36-2999.52, 36-2999.54

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: Nicole Fries

Address: AHCCCS

Office of Administrative Legal Services

701 E. Jefferson, Mail Drop 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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

AHCCCS Nursing Facility Assessment Program is designed to enhance reimbursement for Medicaid nursing facilities bed days using assessment funds to match federal funds. Nursing facilities that are assessed are outlined in statute and rule. Nursing facilities are paid these assessment and federal funds based on Medicaid bed days. The proposed rule represents the AHCCCS Administration's efforts to enhance reimbursement for a critical area of the health care delivery system. The proposed rulemaking will amend rules specifying the rate that will be assessed for each reported bed day beginning October 1, 2022.

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 referenced or relied upon when revising these regulations.

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 that the Nursing Facilities Assessment rulemaking will result in approximately \$29.9 million of net additional payments for the contract year October 1, 2022 through September 30, 2023 to 124 providers.

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

Name: Nicole Fries
Address: AHCCCS
Office of Administrative Legal Services
801 E. Jefferson, Mail Drop 6200

Phoenix, AZ 85034

Telephone: (602) 417-4232

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E-mail: AHCCCSRules@azahcccs.gov

Website: 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. Please send comments to the above address by the close of the comment period, 5:00 p.m., July 5, 2022.

Date: July 5, 2022

Time: 2:00 p.m.

Location: meet.google.com/vvo-hjzw-iou

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:

Not applicable

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 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

ARIZONA LONG-TERM CARE SYSTEM

ARTICLE 7. STANDARDS FOR PAYMENTS

Section

R9-28-702 Nursing Facility Assessment

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-28-702. Nursing Facility Assessment

- A. For purposes of R9-28-702 and R9-28-703, in addition to the definitions under A.R.S. § 36-2999.51, the following terms have the following meaning unless the context specifically requires another meaning:
- “820 transaction” means the standard health care premium payments transaction required by 45 CFR 162.1702.
 - “Assessment year” means the 12 month period beginning October 1st each year
 - “Medicaid patient days” means patient days reported on the Nursing Care Institution Uniform Accounting Report (UAR) as attributable to AHCCCS and its contractors as the primary payor.
 - “Medicare days” means resident days where the Medicare program, a Medicare advantage or special needs plan, or the Medicare hospice program is the primary payor.
 - “Medicare patient days” means patient days reported on the Nursing Care Institution UAR as Skilled Medicare Patient Days or Part C/Advantage/Medicare Replacement Days.
 - “Nursing Care Institution UAR” means the Nursing Care Institution Uniform Accounting Report described by R911-204.
- B. Subject to Centers for Medicare and Medicaid Services (CMS) approval, effective October 1, 2012, nursing facilities shall be subject to a provider assessment payable on a quarterly basis.
- C. All nursing facilities licensed in the state of Arizona shall be subject to the provider assessment except for:
1. A continuing care retirement community,
 2. A facility with 58 or fewer beds, according to the Arizona Department of Health Services, Division of Licensing Services, Provider & Facility Database,
 3. A facility designated by the Arizona Department of Health Services as an Intermediate Care Facility for the Intellectually Disabled,
 4. A tribally owned or operated facility located on a reservation, ~~or~~
 5. Arizona Veteran’s Homes, or
 6. Facilities located outside of the State of Arizona
- D. The Administration shall calculate the prospective nursing facility provider assessment for qualifying nursing facilities as follows:
1. In September of each year, the Administration shall obtain from the Arizona Department of Health Services the most recently published Nursing Care Institution UAR and the information required in subsection (C)(2). At the request of the Administration, a nursing facility shall provide the Administration with any additional information necessary to determine the assessment.
 2. The Administration shall use the information obtained under subsection (D)(1) to determine:
 - a. Each nursing facility’s total annual Medicaid patient days,
 - b. Each nursing facility’s total annual Medicare patient days,
 - c. Each nursing facility’s total annual patient days,
 - d. The aggregate net patient service revenue of all assessed providers, and
 - e. The slope described under 42 CFR 433.68(e)(2).
 3. For each nursing facility, other than a nursing facility exempted in subsection (C) or described in subsection (D)(4), the provider assessment is calculated by multiplying

- the nursing facility's total annual patient days, other than Medicare patient days, by ~~\$15.63~~20.80.
4. For a nursing facility, other than a nursing facility exempted in subsection (C), with the number of total annual Medicaid patient days greater than or equal to the number required to achieve a slope of at least 1 applying the uniformity tax waiver test described in 42 CFR 433.68(e)(2), the provider assessment is calculated by multiplying the nursing facility's total annual patient days, other than Medicare patient days, by ~~\$1.80~~2.40.
 5. For each assessment year the slope described under 42 CFR 433.68(e)(2) shall be recalculated.
 6. The assessment calculated under subsections (D)(3), (D)(4) and (D)(5), shall not exceed 3.5 percent of the aggregate net patient service revenue of all assessed providers as reported on the Nursing Care Institution UAR obtained under subsection (D)(1). If the rates listed in (D)(3) and (D)(4) produce a total annual assessment that exceeds 3.5 percent of the aggregate net patient service revenue of all assessed providers as reported on the Nursing Care Institution UAR obtained under subsection (D)(1), the rates listed in (D)(3) and (D)(4) will be reduced to not exceed the 3.5 percent limit.
 7. All calculations and determinations necessary for the provider assessment shall be based on information possessed by the Administration on or before November 1 of the assessment year.
 8. The Administration will forward the provider assessment by facility to the Arizona Department of Revenue on or before December 1 of the assessment year.
 9. In the event a nursing facility closes during the assessment year, the nursing facility shall cease to be responsible for the portion of the assessment applied to the dates the nursing facility is not operating.
 10. In the event a nursing facility begins operation during the assessment year, that facility will have no responsibility for the assessment until such time as the facility has submitted to the Arizona Department of Health Services the report required by R9-11-204(A) covering a full year of operation.
 11. In the event a nursing facility has a change of ownership such that the facility remains open and the ownership of the facility changes, the assessment liability transfers with the change in ownership.