

NOTICE OF FINAL 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 both 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. The effective date of the rule:**

The agency is requesting an immediate effective date upon filing with the Secretary of State as specified described under A.R.S. § 41-1032(A)(2) which states "To avoid a violation of federal law or regulation or state law, if the need for an immediate effective date is not created due to the agency's delay or inaction." The rulemaking will bring the agency into compliance with federal law. The agency did not cause a delay or inaction.

**4. Citations to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening: 20 A.A.R. 2762, October 10, 2014  
Notice of Proposed Rulemaking: 20 A.A.R. 2745, October 10, 2014

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

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Address: 701 E. Jefferson St.

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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

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 as 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 exceptions 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.

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.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not 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.

**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. A 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 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

**10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:**

No significant changes were made between the proposed rulemaking and the final rulemaking. Technical changes have been made as a result of the Governors Regulatory Review Council staff's recommendations.

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

No comments were received as of the close of the comment period of November 10, 2014.

**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:**

No other matters are applicable.

**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:**

This 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:**

Not applicable.

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

None

**14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final 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 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 9 A.A.C. 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.~~