

NOTICE OF FINAL 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) Rulemaking Action:**

|               |          |
|---------------|----------|
| R9-28-401.    | Amend    |
| R9-28-401.01. | Amend    |
| R9-28-402.    | Repealed |
| R9-28-403.    | Repealed |
| R9-28-404.    | Repealed |
| R9-28-405.    | Repealed |
| R9-28-406.    | Amend    |
| R9-28-407.    | Amend    |
| R9-28-408.    | Amend    |
| R9-28-409.    | Amend    |
| R9-28-410.    | Amend    |
| R9-28-411.    | Amend    |
| R9-28-413.    | Amend    |
| R9-28-414.    | Amend    |
| R9-28-415.    | Amend    |
| R9-28-416.    | Amend    |
| R9-28 418.    | 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. § 36-2932

Implementing statute: A.R.S. §§ 36-2932, 36-2933, 36-2934, 36-2934.01

Federal statute: 42 CFR Parts 431, 435, and 457

17144 Federal Register / Vol. 77, No. 57 / Friday, March 23, 2012 / Rules and Regulations

Patient Protection and Affordable Care Act (Pub. L. 111–148, enacted on March 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, enacted on March 30, 2010), and together referred to as the Affordable Care Act of 2010 (Affordable Care Act)

**3. The effective date of the rule:**

The agency requests an immediate effective date upon filing with the Secretary of State as specified in A.R.S. § 41-1032(A). The agency believes this rulemaking meets the immediate effective date requirements under the following subsections:

2. 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.
3. To comply with deadlines in amendments to an agency's governing statute or federal programs, if the need for an immediate effective date is not created due to the agency's delay or inaction.
4. To provide a benefit to the public and a penalty is not associated with a violation of the rule.

These exceptions apply to this rulemaking since the Affordable Care Act requires the Administration to implement the higher federal poverty limit percentages and increase to the age limit for children in the foster care system. Therefore benefiting the public by providing coverage to more uninsured Arizona residents, The ACA requires this change to be effective January 1, 2014. The Administration will rely on federal law for the first seven days of January until the rule is effective, no penalties or effects are associated with the different effective date. The Administration had to wait for CMS to approve the eligibility FPL requirements which caused a delay in filing.

**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: 19 A.A.R. 3155, October 11, 2013

Notice of Proposed Rulemaking: 19 A.A.R. 3099, October 11, 2013

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

Name: Mariaelena Ugarte  
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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 promulgating rule amendments as result of the Affordable Care Act of 2010 and Arizona Laws 2013, First Special Session, Chapter 10 (House Bill 2010). The majority of the significant amendments exist within Chapter 22, acute care eligibility, but as a result of this review the Administration has reviewed the

eligibility requirements existing within Chapter 28, ALTCS eligibility. The proposed changes are to ensure clarity, conciseness and the accuracy of the parallel eligibility requirements for the ALTCS program, such as, changes to processes for determining and redetermining eligibility including changes to accommodate on line applications and internet-based verification of income, citizenship and alien status, state residence, and other eligibility factors; and miscellaneous changes to clarify and conform to federal requirements.

**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 promulgating the proposed 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 proposed rule changes will not have a significant impact on funds used for the coverage of ALTCS Medicaid applicants.

**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. Grammatical and technical changes have been made for clarity and as a result of the Governor's Regulatory Review Council's review.

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

Comments received as of the close of the comment period of November 12, 2013 were for the related rulemakings for Chapter 22 and Chapter 31. This rulemaking was not addressed in those comments, and no other comments were received about these rules.

**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:**

The rule does not require a permit.

**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 federal law and has been made as required under federal authority: 42 CFR Parts 431, 435, and 457

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Patient Protection and Affordable Care Act (Pub. L. 111–148, enacted on March 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, enacted on March 30, 2010), and together referred to as the Affordable Care Act of 2010 (Affordable Care Act)

**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 as specified in A.R.S. § 41-1028 and its location in the rule:**

R9-28-409 - 42 U.S.C. 1396p(c)(1)(A),

R9-28-409 - 42 U.S.C. 1396p(c)(1)(B)

R9-28-409 - 42 U.S.C. 1396p(c)(2)

R9-28-409 - 42 U.S.C. 1396p(c)(1)(E)

R9-28-409 - 42 U.S.C. 1396p(c)(2)(C)

**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:**

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**

**ARIZONA LONG-TERM CARE SYSTEM**

**ARTICLE 4. ELIGIBILITY AND ENROLLMENT**

Section.

R9-28-401. Eligibility and Enrollment-Related Definitions

R9-28-401.01. General

R9-28-402. ~~Categorical Requirements and Coverage Groups~~ Repeal

R9-28-403. ~~State Residency~~ Repeal

R9-28-404. ~~Citizenship and Qualified Alien Status~~ Repeal

R9-28-405. ~~Social Security Enumeration~~ Repeal

R9-28-406. ALTCS Living Arrangements

R9-28-407. Resource Criteria for Eligibility

R9-28-408. Income Criteria for Eligibility

R9-28-409. Transfer of Assets

R9-28-410. Community Spouse

R9-28-411. Changes, Redeterminations, and Notices

R9-28-413. Enrollment with an ~~EPD~~ Elderly and Physically Disabled (EPD) Program Contractor

R9-28-414. Enrollment with the DD Program Contractor

R9-28-415. Enrollment with a Tribal Program Contractor

R9-28-416. Enrollment with the ~~FFS~~ Fee-for-Service (FFS) Program

R9-28 418. Disenrollment

## ARTICLE 4. ELIGIBILITY AND ENROLLMENT

### **R9-28-401. Eligibility and Enrollment-Related Definitions**

Definitions. For purposes of this Article, the following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning:

"ALTCS acute care services" means services under 9 A.A.C. 22, Articles 2 and 12, that are provided to a person who meets ALTCS eligibility requirements in 9 A.A.C. 28, Article 4 and who:

Lives in an acute care living arrangement described in R9-28-406; or

Is not eligible for long-term care benefits, described in R9-28-409, due to a transfer under R9-28-409 without receiving fair consideration, or

Has refused institutionalized or HCBS services.

"Community spouse" means the husband or wife of an institutionalized person who has entered into a contract of marriage, recognized as valid by the state of Arizona, and who does not live in a medical institution.

"CSRD" means Community Spouse Resource Deduction, the amount of a married couple's resources that is excluded in the eligibility determination to prevent impoverishment of the community spouse as determined under R9-28-410.

"Fair consideration" means income, real or personal property, services, or support and maintenance equal to or exceeding the fair market value of the income or resources that were transferred.

"First continuous period of institutionalization" means the first period beginning on or after September 30, 1989 that the applicant was institutionalized for 30 consecutive days or more. To be considered institutionalized, the applicant must:

Have resided in a medical institution;

Have received paid formal Home and Community Based Services (HCBS);

Have received a combination of medical institutionalization and HCBS, or

Intend to receive HCBS and either:

Requests a Resource Assessment and is determined in need of institutional services by a Resource Assessment Medical Evaluation; or

Applies for ALTCS and is determined medically eligible by the Pre-Admission Screening (PAS).

"Institutionalized" means residing in a medical institution or receiving or expecting to receive HCBS that prevent the person from being placed in a medical institution as determined by the PAS.

"Medically eligible" means meeting the ALTCS medical eligibility criteria under Article 3 of this Chapter.

"MMMNA" means Minimum Monthly Maintenance Needs Allowance.

"Redetermination" means a periodic review of all eligibility factors for a recipient.

"Representative" means a person other than a spouse or a parent of a dependent child, who applies for ALTCS on behalf of another person.

"Share of costs" means the amount an ALTCS recipient is required to pay toward the cost of long term care services.

"Spouse" means a person legally married under Arizona law, a person eligible for Social Security benefits as the spouse of another person, or a person living with another person of the opposite sex and the couple represents themselves in the community as husband and wife.

**R9-28-401.01. General**

**A. Application for ALTCS coverage.**

1. The Administration shall provide a person the opportunity to apply for ALTCS ~~without delay~~ as described under Chapter 22, Article 3, unless specified otherwise in this Section.
- ~~2. A person may be accompanied, assisted, or represented by another in the application process.~~
- ~~3.~~ 2. To apply for ALTCS, a person shall submit an application to an ALTCS eligibility office.
  - a. The application shall contain the applicant's name and address.
  - b. Before the application is approved, a person listed in A.A.C. ~~R9-22-1406(D)~~ R9-22-302(2) shall sign the application.
  - c. A witness shall also sign the application if an applicant signs the application with a mark.
  - d. The date of application is the date the application is received by the Administration or ~~Department~~ its designee as described in ~~R9-22-1406(C)~~ R9-22-302.
- ~~4.~~ 3. Except as provided in ~~R9-22-1501(D)(5)~~ R9-22-306, the Administration shall determine eligibility within 45 days from the date of application.
- ~~5.~~ 4. An applicant or representative who files an ALTCS application may withdraw the application for ALTCS coverage either orally or in writing to the ALTCS eligibility office where the application was filed. The Administration shall provide the applicant with a denial notice under subsection ~~(G)~~ (E).
- ~~6.~~ 5. If an applicant dies while an application is pending, the Administration shall complete an eligibility determination for the deceased applicant.
- ~~7.~~ 6. If a person dies before an application is filed, the Administration shall complete an eligibility determination on an application filed on behalf of the deceased applicant, if the application is filed in the month of the person's death.

**B. Conditions of ALTCS eligibility.** Except for persons identified in subsection (C), the Administration shall approve a person for ALTCS if all conditions of eligibility ~~for one of the ALTCS coverage groups listed in R9-28-402(B)~~ are met. The conditions of eligibility are:

- ~~1. Categorical requirements under R9-28-402;~~
- ~~2.~~ 1. Citizenship and alien status under Chapter 22, Article 3 ~~R9-28-404~~;
- ~~3.~~ 2. SSN under Chapter 22, Article 3 ~~R9-28-405~~;
- ~~4.~~ 3. Living arrangements under R9-28-406;
- ~~5.~~ 4. Resources under R9-28-407;
- ~~6.~~ 5. Income under R9-28-408;
- ~~7.~~ 6. Transfers under R9-28-409;



~~8.7.~~ A legally authorized person shall assign rights to the Administration for medical support and for payment of medical care from any first- and third-parties as described under R9-22-311, and shall cooperate by:

- ~~a.~~ Obtaining medical support and payments and establishing paternity for a child born out of wedlock, except for pregnant women under A.A.C. R9-22-1421, unless the person establishes good cause under 42 CFR 433.147 for not cooperating; and
- ~~b.~~ Identifying and providing information to assist the Administration in pursuing first and third parties who may be liable to pay for care and services unless the person establishes good cause for not cooperating;

~~9.8.~~ A person shall take all necessary steps to obtain annuity, pension, retirement, and disability benefits for which a person may be entitled ~~unless the person establishes good cause for not doing so~~;

~~10.9.~~ State residency under ~~R9-22-305~~R9-28-403;

~~11.10.~~ Medical eligibility as specified in Chapter 28, Article 3 of this Chapter; and

~~12.11.~~ Providing information and verification as specified ~~in subsection (D)~~ under Chapter 22, Article 3.

C. Persons eligible for Title IV-E or Title XVI are only required to meet the conditions under subsection (B)(6), (B)(10), (B)(11) and with respect to trusts, A.R.S. § 36-2934.01. ~~To be determined eligible for ALTCS, a person eligible for benefits under Title IV-E or Title XVI of the Social Security Act shall provide information to allow the Administration to determine:~~

- ~~1.~~ Medical eligibility as specified in Article 3 of this Chapter,
- ~~2.~~ Post eligibility treatment of income as specified in R9-28-408,
- ~~3.~~ The existence of trusts in accordance with federal and state law, and
- ~~4.~~ Transfer of property as specified in R9-28-409.

~~D.~~ Verification. If requested by the Administration, a person shall provide information and documentation to verify the following criteria or shall authorize the Administration to verify the following criteria:

- ~~1.~~ Conditions of eligibility as specified in subsection (B); and
- ~~2.~~ Other individual circumstances necessary to determine a person's eligibility and post eligibility treatment of income (share of cost).

~~E.~~ Documentation of the eligibility decision. The ALTCS eligibility interviewer shall include facts in a person's case record to support the decision on the person's application.

~~F.~~ Eligibility effective date. Eligibility is effective the first day of the month that all eligibility requirements are met but no earlier than the month of application.

D. Eligibility effective date.

1. Eligibility is effective on the first day of the month that all eligibility requirements are met, including the period described under R9-22-303.
2. The effective date of eligibility for an applicant who moves into Arizona is no sooner than the date Arizona residency is established.
3. The effective date of eligibility for an inmate applying for medical coverage is the date the applicant no longer meets the definition of an inmate of a public institution.

**G.E.** Notice. The Administration shall send a person a ~~written~~ notice of the decision regarding the person's application. The notice shall include a statement of the action and an explanation of the person's hearing rights as specified in 9 A.A.C. 34 and:

1. ~~If the applicant's eligibility is approved, the notice shall contain:~~

a. ~~The effective date of eligibility; and~~

b. ~~Post eligibility treatment of income (share of cost) information, which is the amount the person shall pay toward the cost of care.~~

2. ~~If the applicant's eligibility is denied, the notice shall contain:~~

a. ~~The effective date of the denial;~~

b. ~~A statement detailing the reason for the person's denial, including specific financial calculations and the financial eligibility standard if applicable; and~~

c. ~~The legal authority supporting the decision.~~

1. Approval. If the applicant meets all the eligibility requirements and conditions of eligibility of this Article, the Administration or its designee shall approve the application and provide the applicant with an approval notice. The approval notice shall contain:

a. The name of each approved applicant,

b. The effective date of eligibility for each approved applicant,

c. The amount of share of cost, and

d. The applicant's right to appeal the decision.

2. Denial. If an applicant fails to meet the eligibility requirements or conditions of eligibility of this Article, the Administration or its designee shall deny the application and provide the applicant with a denial notice. The denial notice shall contain:

a. The name of each ineligible applicant,

b. The specific reason why the applicant is ineligible,

c. The income and resource calculations for the applicant compared to the income or resource standards for eligibility when the reason for the denial is due to the applicant's income or resources exceeding the applicable standard,

d. The legal citations supporting the reason for the ineligibility,

e. The location where the applicant can review the legal citations, and

f. The applicant's right to appeal the decision and request a hearing.

**H.F.** Confidentiality. The Administration shall maintain the confidentiality of a person's record ~~and shall not disclose information regarding the person's financial, medical, or other privacy interests except~~ under A.A.C. R9-22-512.

**R9-28-402. Categorical Requirements and Coverage Groups Repeal**

~~A. Categorical requirements. As a condition of ALTCS eligibility, a person shall meet one of the following categorical requirements in this Section under 42 CFR 435, Subpart F.~~

~~1. Aged.~~

~~a. "Aged" means a person who is 65 years of age or older.~~

~~b. A person is considered to be age 65 on the day before the anniversary of birth.~~

~~c. Age shall be verified under 20 CFR 404.715 and 20 CFR 404.716.~~

~~2. Blind. Blindness shall be determined by the DES Disability Determination Services Administration, under 42 U.S.C. 1382e(a)(2).~~

~~3. Disabled. A person is considered to be disabled for ALTCS if the person is determined medically eligible under Article 3.~~

~~4. Child. A child is a person defined in A.A.C. R9-22-1420.~~

~~5. Pregnant.~~

~~a. Pregnancy shall be medically verified by one of the following licensed health care professionals:~~

~~i. Licensed physician;~~

~~ii. Certified physician's assistant;~~

~~iii. Certified nurse practitioner;~~

~~iv. Licensed midwife; or~~

~~v. Licensed registered nurse, under the direction of a licensed physician.~~

~~b. Written verification of pregnancy shall include the expected date of delivery.~~

~~6. A specified relative who is the caretaker relative of a deprived child under Section 2 of the AFDC State Plan as it existed on July 16, 1996, incorporated by reference and on file with the Administration and the Secretary of State. This incorporation by reference contains no future editions or amendments.~~

~~B. ALTCS coverage groups. In addition to other requirements in this Article, a person shall meet ALTCS eligibility criteria in one of the following coverage groups:~~

~~1. A coverage group under A.R.S. §§ 36-2901(6)(a)(i) or 36-2901(6)(a)(ii).~~

~~2. The 210 coverage group specified in 42 CFR 435.210. A person in the 210 coverage group is medically eligible as specified in Article 3 and would be eligible for SSI cash assistance or meets the criteria for AFDC under Section 2 of the AFDC State Plan as it existed on July 16, 1996.~~

~~3. The 236 coverage group under 42 CFR 435.236. A person in the 236 coverage group is medically eligible as specified in Article 3 and the person resides in a medical institution.~~

~~4. The 217 coverage group under 42 CFR 435.217. A person in the 217 coverage group is medically eligible as specified in Article 3 and the person resides in a home and community based setting described in R9-28-406(A)(2).~~

### **R9-28-403. State Residency Repeal**

As a condition of eligibility, a person shall be a resident of Arizona as specified in 42 CFR 435.403, December 21, 1990, incorporated by reference and on file with the Administration and Secretary of State. This incorporation contains no future editions or amendments.

#### **R9-28-404. Citizenship and Qualified Alien Status Repeal**

As a condition of eligibility, a person shall be:

1. A citizen of the United States;
2. A qualified alien specified in 8 U.S.C. 1641 and A.R.S. § 36-2903.03, to the extent consistent with federal law; or
3. A nonqualified alien who received ALTCS services on or before August 21, 1996, as specified in Laws 1997, Ch. 300, § 70.

#### **R9-28-405. Social Security Enumeration Repeal**

As a condition of eligibility, a person shall furnish an SSN, as specified in 42 CFR 435.910 and 435.920.

#### **R9-28-406. ALTCS Living Arrangements**

**A.** Long-term care living arrangements. A person may be eligible for ALTCS services, under Article 2, while living in one of the following settings:

1. Institutional settings:
  - a. A ~~NF~~ Nursing Facility (NF) defined in 42 U.S.C. 1396r(a),
  - b. An ~~IMD~~ Institution for Mental Diseases (IMD) for a person who is either under age 21 or age 65 or older or a person aged 21 through 64 for up to 30 days per admission and no more than 60 days per contract year under the Administration's Section 1115 Waiver with CMS,
  - c. An ~~ICF-MR~~ Intermediate Care Facility for the Mentally Retarded (ICF-MR) for a person with developmental disabilities,
  - d. A hospice (free-standing, hospital, or nursing facility subcontracted beds) defined in A.R.S. § 36-401; or
2. Home and community-based services (HCBS) settings:
  - a. A person's home defined in R9-28-101(B), or
  - b. Alternative HCBS settings defined in R9-28-101(B).

**B.** ~~ALTCS acute care living arrangements. A person applying for or receiving ALTCS coverage shall be eligible for only ALTCS acute care coverage in the following living arrangements, settings, or locations:~~

1. ~~The gross income limit is 300 percent of the FBR for a person meeting the requirements of the 236 coverage group under R9-28-402(B) and who resides in one of the following settings:~~
  - a. ~~A noncertified medical facility, or~~
  - b. ~~A medical facility that is registered with AHCCCS but does not have a contract with an ALTCS program contractor, or~~
  - e. ~~A location outside of Arizona if the person is temporarily absent from Arizona.~~
2. ~~The net income limit is 100 percent of the FBR for a person who does not meet the requirements of the 217 or 236 coverage groups specified in R9-28-402(B) and who resides in one of the following settings:~~
  - a. ~~At home or in an alternative HCBS setting if a person refuses HCBS service; or~~

~~b. A room in an assisted living center, or a licensed assisted living home or center which is not registered with AHCCCS.~~

**B. ALTCS acute care living arrangements.**

1. A person applying for and otherwise entitled to receive ALTCS coverage shall receive only ALTCS acute care coverage if residing in one of the following living arrangements, settings, or locations:

a. A noncertified medical facility, or

b. A medical facility that is registered with AHCCCS but does not have a contract with an ALTCS program contractor, or

c. At home or in an alternative HCBS setting when the person refuses HCBS services; or

d. A licensed or certified HCBS facility that is not registered with AHCCCS.

2. Eligibility income limits.

a. For a person residing in a setting described in subsection (1)(a) or (1)(b), the gross income limit is 300 percent of the Federal Benefit Rate (FBR).

b. For a person residing in a setting described in subsection (1)(c) or (1)(d), the net income limit is 100 percent of the FBR.

**C. Inmate of a public institution.** An inmate of a public institution is not eligible for the ALTCS program if federal financial participation (FFP) is not available as described under R9-22-310.

**R9-28-407. Resource Criteria for Eligibility**

**A.** The following Medicaid-eligible persons shall be deemed to meet the resource requirements for ALTCS eligibility unless ineligible due to federal and state laws regarding trusts.

1. A person receiving Supplemental Security Income (SSI);

2. A person receiving Title IV-E Foster Care Maintenance payment; or

3. A person receiving a Title IV-E Adoption Assistance.

**B.** Except as provided in subsection (C), if a person's ALTCS eligibility is most closely related to SSI and is not included in subsection (A), the Administration shall determine eligibility using resource criteria in 42 U.S.C. 1382(a)(~~3~~)(1)(B), 42 U.S.C. 1382b, and 20 CFR 416 Subpart L. The resource limit for an individual is \$2,000 or \$3,000 for a couple under 20 CFR 416.1205.

**C.** The Administration permits the following exceptions to the resource criteria for a person identified in subsection (B):

1. Resources of the spouse or parent of a minor child are disregarded beginning the first day in the month the person is institutionalized.

2. The value of household goods and personal effects is excluded.

3. The value of oil, timber, and mineral rights is excluded.

4. The value of all of the following shall be disregarded:

a. Term insurance;

b. Burial insurance;

- c. Assets that a person has irrevocably assigned to fund the expense of a burial;
- d. The cash value of all life insurance if the face value does not exceed \$1,500 total per insured person and the policy has not been assigned to fund a pre-need burial plan or has a legally binding designation as a burial fund;
- e. The value of any burial space held for the purpose of providing a place for the burial of the person, a spouse, or any other member of the immediate family;
- f. \$1,500 of the equity value of an asset that has a legally binding designation as a burial fund or a revocable burial arrangement if there is no irrevocable burial arrangement;
- g. During the time a person remains continuously eligible, all appreciation in the value of the assets in subsection (C)(4)(f) will be disregarded; and
- h. The amount of a payment refunded by a nursing facility after ALTCS approval is only excluded for six months beginning with the month the refund was received. The Administration shall evaluate the refund in accordance with R9-28-409 if transferred without receiving something of equal value.

**D.** For an institutionalized spouse, a resource disregard is allowed under 42 U.S.C. 1396r-5(c).

**E.** Trusts are evaluated in accordance with federal and state laws to determine eligibility.

~~**F.** A person is not eligible for long term care services if countable resources exceed the following limits:~~

- ~~1. For a SSI-related person identified in subsection (B), the limit is \$2,000 or \$3,000 per couple under 20 CFR 416.1205.~~
- ~~2. For a person eligible under 42 U.S.C. 1396a(a)(10)(A)(i)(IV), 42 U.S.C. 1396a(a)(10)(A)(i)(VI), and 42 U.S.C. 1396a(a)(10)(A)(i)(VII), there is no resource limit.~~

~~**G-F.** A person shall provide information and verification necessary to determine the countable value of resources.~~

### **R9-28-408. Income Criteria for Eligibility**

**A.** The following Medicaid-eligible persons shall be deemed to meet the ~~resource~~ income requirements for ALTCS eligibility unless ineligible due to federal and state laws regarding trusts.

- 1. A person receiving Supplemental Security Income (SSI);
- 2. A person receiving Title IV-E Foster Care Maintenance Payments; or
- 3. A person receiving Title IV-E Adoption Assistance.

**B.** ~~If a person's ALTCS eligibility is most closely related to SSI and~~ the person is not included in subsection (A), the Administration shall count the income described in 42 U.S.C. 1382a and 20 CFR 416 Subpart K to determine eligibility with the following exceptions:

- 1. Income types excluded by 42 U.S.C. 1382a(b) for determining net income are also excluded in determining gross income to determine eligibility;
- 2. Income of the parent or spouse of a minor child is counted as part of income under 42 CFR 435.602, except that the income of the parent or spouse is disregarded for the month beginning when the person is institutionalized;

3. In-kind support and maintenance, under 42 U.S.C. 1382a(a)(2)(A), are excluded for both net and gross income tests;
4. The income exceptions under A.A.C. R9-22-1503(B) apply to the net income test; and
5. Income described in subsection ~~(D)~~ (C) is excluded.

~~C.~~ For a person whose eligibility is determined under 42 U.S.C. 1396a(a)(10)(A)(i)(IV), 42 U.S.C. 1396a(a)(10)(A)(i)(VI), or 42 U.S.C. 1396a(a)(10)(A)(i)(VII), the methodology in A.A.C. R9-22-1420 through R9-22-1426 is used to determine eligibility in accordance with 42 CFR 435.602. Income standards are then applied as described in A.A.C. R9-22-1428.

~~D.C.~~ The following are income exceptions:

1. Disbursements from a trust are considered in accordance with federal and state law; and
2. For an institutionalized spouse, a person defined in 42 U.S.C. 1396r-5(h)(1), income is calculated in accordance with 42 U.S.C. 1396r-5(b).

~~E.~~ As a condition of eligibility for ALTCS, countable income shall be less than or equal to the following limits:

1. For a person in either the 217 or 236 coverage group specified in R9-28-402(B), 300 percent of the FBR;
2. For a person or a couple in the SSI-related 210 coverage group specified in R9-28-402(B), 100 percent of the FBR;
3. For a person who is under 42 U.S.C. 1396a(a)(10)(A)(i)(IV), 42 U.S.C. 1396a(a)(10)(A)(i)(VI), and 42 U.S.C. 1396a(a)(10)(A)(i)(VII) and is:
  - a. A child who is at least age six but less than age 19; 100 percent of the FPL, adjusted by household size;
  - b. A child age one through five, 133 percent of the FPL, adjusted by household size;
  - c. A child less than age one, 140 percent of the FPL, adjusted by household size; or
  - d. A pregnant woman, 150 percent of the FPL, adjusted by household size.

D. Income eligibility. Except as provided in R9-28-406(B)(2)(b), countable income shall not exceed 300 percent of the FBR.

~~F.E.~~ The ~~Director~~ Administration shall determine the amount a person shall pay for the cost of ALTCS services and the post-eligibility treatment of income (share-of-cost) under A.R.S. § 36-2932(L) and 42 CFR 435.725 or 42 CFR 435.726. The ~~Director~~ Administration shall consider the following in determining the share-of-cost:

1. Income types excluded by 42 U.S.C. 1382a(b) for determining net income are excluded in determining share-of-cost.
2. SSI benefits paid under 42 U.S.C. 1382(e)(1)(E) and (G) to a person who receives care in a hospital or nursing facility are not included in calculating the share-of-cost.
3. The share-of-cost of a person with a spouse is calculated as follows:
  - a. If an institutionalized person has a community spouse under 42 U.S.C. 1396r-5(h), share-of-cost is calculated under R9-28-410 and 42 U.S.C. 1396r-5(b) and (d); and
  - b. If an institutionalized person does not have a community spouse, share of cost is calculated solely on the income of the institutionalized person.

4. Income assigned to a trust is considered in accordance with federal and state law.
5. The following expenses are deducted from the share-of-cost of an eligible person to calculate the person's share-of-cost:
  - a. A personal-needs allowance equal to 15 percent of the FBR for a person residing in a medical institution for a full calendar month. A personal-needs allowance equal to 300 percent of the FBR for a person who receives or intends to receive HCBS or who resides in a medical institution for less than the full calendar month;
  - b. A spousal allowance, equal to the FBR minus the income of the spouse, if a spouse but no children remain at home;
  - c. A ~~family household~~ allowance equal to the standard specified in Section 2 of the AFDC Aid for Families with Dependent Children (AFDC) State Plan as it existed on July 16, 1996 for the number of ~~family household~~ members minus the income of the ~~family household~~ members if a spouse and children remain at home;
  - d. Expenses for the medical and remedial care services listed in subsection (6) if the expenses have not been paid or are not subject to payment by a third-party, the person still has the obligation to pay the expense, and one of the following conditions is met:
    - i. The expense represents a payment made and reported to the Administration during the application period or a payment reported to the Administration no later than the end of the month following the month in which the payment occurred and the expense has not previously been allowed a share-of-cost deduction; or
    - ii. The expense represents the unpaid balance of an allowed, noncovered medical or remedial expense, and the expense has not been previously a share-of-cost deduction;
  - e. An amount determined by the Director for the maintenance of a single person's home for not longer than six months if a physician certifies that the person is likely to return home within that period; or
  - f. An amount for Medicare and other health insurance premiums, deductibles, or coinsurance not subject to third-party reimbursement; and
6. ~~In the post-eligibility calculation of income; The deductible expense under subsection (5)(b) shall not include any amount for a service covered under the Title XIX State Plan. The deductible expense may include the TPL deductible, co-insurance, and co-payment charges for the following medically necessary services:~~
  - ~~a. The Administration recognizes that the following medical and remedial care services are not covered under the Title XIX State Plan, nor covered by a program contractor for a person determined to need institutional services under this Article when the medical or remedial care services are medically necessary for the person:~~
    - ~~i. a.~~ a. Nonemergency dental services for a person who is age 21 or older;
    - ~~ii. b.~~ b. Hearing aids and hearing aid batteries for a person who is age 21 or older;
    - ~~iii. c.~~ c. Nonemergency eye care and prescriptive lenses for a person who is age 21 or older;
    - ~~iv. d.~~ d. Chiropractic services, including treatment for subluxation of the spine, demonstrated by x-ray;



~~v. e.~~ Orthognathic surgery for a person who is age 21 or older; or

f. Co-payments for Medicare Part D prescriptions, if not paid by the State.

~~b. g.~~ On a case-by-case basis, other noncovered medically necessary services that a person petitions the Administration for and the Director approves.

**G.F.** A person shall provide information and verification of income under A.R.S. § 36-2934(G) and 20 CFR 416.203.

#### **R9-28-409. Transfer of Assets**

- A. The provisions in this Section apply to an institutionalized person who has, or whose spouse has, transferred assets and received less than the fair market value (uncompensated value) as specified in A.R.S. § 36-2934(B) and 42 U.S.C. 1396p(c)(1)(A), August 10, 1993 July 1, 2009, incorporated by reference and on file with the Administration and the Secretary of State. This incorporation by reference contains no future editions or amendments. which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
- B. A person shall report transfer of assets. The Administration shall evaluate all transfers ~~occurring made~~ during or after the look-back period under 42 U.S.C. 1396p(c)(1)(B), August 10, 1993 July 1, 2009, incorporated by reference and on file with the Administration and the Secretary of State. This incorporation by reference contains no future editions or amendments. which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments. The person shall provide verification of any transfer.
- C. Certain transfers are permitted under 42 U.S.C. 1396p(c)(2), August 10, 1993 July 1, 2009, incorporated by reference and on file with the Administration and the Secretary of State. This incorporation by reference contains no future editions or amendments. which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
- D. If the Administration determines a disqualification period applies due to a transfer, and the person is otherwise eligible, the person may remain eligible for ALTCS acute care services but shall be disqualified for receiving ALTCS coverage under 42 U.S.C. 1396p(c)(1)(C)(E), August 10, 1993 July 1, 2009, which is incorporated by reference and on file with the Administration and the Secretary of State. This incorporation contains no future editions or amendments. which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

~~E. The period of disqualification for transfers shall be computed by dividing the cumulative uncompensated value of the transferred assets by the average cost for a private pay patient for nursing care services at the time of application.~~

- ~~1. For single or multiple transfers occurring in the same calendar month, the sum of all uncompensated value shall be divided by the monthly private pay rate. Disregarding fractions, the result of this calculation equals the number of months of ineligibility.~~
- ~~2. For multiple transfers occurring in different calendar months, the total uncompensated value for each transfer of assets shall be determined under subsection (E)(1) but, if the periods of ineligibility overlap, the period of ineligibility shall run consecutively. Fractions are disregarded at the end of the entire period.~~
- ~~3. For multiple transfers occurring in different months, the total uncompensated value for each transfer shall be determined under subsection (E)(1), but if the periods of ineligibility do not overlap, each period of ineligibility shall be treated under subsection (E)(1).~~

E. Period of disqualification for transfers.

1. Calculating a period of disqualification at application. The uncompensated value of all transfers shall be divided by the monthly private pay rate. The result of this calculation equals the number of months of ineligibility.
2. Calculating a period of disqualification after approval:
  - a. For one or more transfers occurring in one calendar month or in consecutive months, the period of disqualification is determined under subsection (E)(1). The period of disqualification begins with the month that the first transfer was made.
  - b. For transfers occurring in nonconsecutive calendar months, the period of disqualification for each transfer of assets shall be determined separately under subsection (E)(1) to determine if the periods of disqualification overlap.
    - i. Periods of disqualification that overlap shall be added together and shall run consecutively, beginning with the month the first transfer was made.
    - ii. Periods of disqualification that do not overlap are each applied separately beginning the month that the transfer was made.

F. Transfers of assets for less than fair market value are presumed to have been made to establish eligibility for ALTCS services.

G. Rebuttal of disqualification.

1. A person found ineligible for ALTCS services by reason of a transfer of assets for uncompensated value shall have the right to rebut the disqualification for reasons stated under 42 U.S.C. 1396p(c)(2)(C), August 40, 1993 July 1, 2009, incorporated by reference and on file with the Administration and the Secretary of State. This incorporation by reference contains no future editions or amendments, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office.

Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

2. The person shall have the burden of rebutting the presumption.
3. If a person rebuts a transfer on the basis of debt repayment, the Administration shall determine the validity of the debt and payment amount under A.R.S. § 44-101.

**H.** ~~Undue hardship. A period of disqualification for ALTCS services due to a transfer may be waived by the Director if the person is otherwise eligible and a substantial showing is made by clear and convincing evidence that:~~

- ~~1. The person is unable to obtain necessary medical care without ALTCS eligibility, and~~
- ~~2. Is in imminent danger of death.~~

The transfer penalty period may be waived if denial of eligibility for long term care services creates an undue hardship.

1. The Administration shall consider whether the transfer penalty period can be waived when:
  - a. The individual is otherwise eligible for ALTCS benefits and application of the transfer of assets provision would deprive the individual of medical care such that the individual's life or health would be in endangered, or
  - b. The individual is otherwise eligible for ALTCS benefits and is deprived of food, clothing, shelter or other necessities of life as evidenced by the fact that the individual's income is less than or equal to the Federal Poverty Level (FPL);
2. The transfer penalty period shall be waived when:
  - a. The individual is incapacitated as established by the Court or by a physician; and
  - b. The individual who had the legal authority to handle the applicant's finances has violated the terms of that legal authority; and
  - c. An individual acting on the applicant's behalf has exhausted all legal remedies to regain the asset, such as but not limited to, filing a police report and seeking recovery through civil court.
3. The transfer penalty period shall not be waived when:
  - a. The applicant was mentally competent and would have been aware of the consequences of the transfers at the time the transfers occurred; or
  - b. The applicant gave another person specific legal authority to make the transfers, such as a conservator, or a person granted the applicant's financial power of attorney when the applicant was competent to do so, and the person did not violate the limits of that authority in making the transfers.

#### **R9-28-410. Community Spouse**

- A. The methodology in this Section applies to an institutionalized person who has a community spouse.

**B.** If the institutionalized person's most current period of continuous institutionalization began on or after September 30, 1989, the Administration shall use the methodology for the treatment of resources under 42 U.S.C. 1396r-5(c).

1. The following resource criteria shall be used in addition to the criteria specified in R9-28-407 to be eligible:
  - a. Resources owned by a couple at the beginning of the first continuous period of institutionalization from and after September 30, 1989, shall be computed from the first day of institutionalization. The total value of resources owned by the institutionalized spouse and the community spouse, and a spousal share equal to one-half of the total value, are computed under 42 U.S.C. 1396r-5(c)(1).
  - b. The Community Spouse Resource ~~Reduction~~ Deduction (CSRD) is calculated under 42 U.S.C. 1396r-5(f)(2).
  - c. The CSRD is subtracted from the total resources of the couple to determine the amount of the couple's resources considered available to the institutionalized spouse at the time of application under 42 U.S.C. 1396r-5(c)(2).
    - i. Resources in excess of the CSRD must be equal to or less than the standard for a person specified in R9-28-407.
    - ii. The CSRD is allowed as a deduction for 12 consecutive months beginning with the first month in which the institutionalized spouse is eligible for ALTCS benefits. Beginning with the 13th month, the separate property of the institutionalized spouse must be within the resource standard for a person specified in R9-28-407.
    - iii. If a person who was previously eligible for ALTCS as an institutionalized person with a community spouse reapplies for ALTCS after a break in institutionalization of more than 30 days, the CSRD will be allowed as a deduction from resources for a 12-month period in addition to the period in subsection (c)(ii).
2. Resources are excluded as specified in R9-28-407, except that one vehicle is totally excluded regardless of its value, and any additional vehicles are included using equity value.
3. The Director may grant eligibility if the Administration determines that a denial of eligibility would create an undue hardship for the institutionalized spouse.

**C.** This Section applies to the income eligibility and post-eligibility treatment of income beginning September 30, 1989, regardless of when the first period of institutionalization began.

1. Income payments are attributed to the institutionalized person and the community spouse under 42 U.S.C. 1396r-5(b)(2).
2. Income is excluded as specified in R9-28-408.
3. The institutionalized spouse's income eligibility is determined by combining the income of the institutionalized person and the community spouse and dividing by two. If the institutionalized person is not eligible using this method, the income eligibility shall be based on the income received in the person's name.

4. The following allowances described in 42 U.S.C. 1396r-5(d)(1) and (2) are allowed as deductions from the institutionalized spouse's income in determining share-of-cost:
  - a. A personal-needs allowance specified in R9-28-408~~(f)(5)(a)(E)(5)~~;
  - b. A community spouse monthly income allowance, but only to the extent that the institutionalized spouse's income is made available to or for the benefit of the community spouse;
  - c. A family allowance for each family member equal to one-third of the amount remaining after deducting the countable income of the family household member from a ~~minimum monthly needs allowance~~ Minimum Monthly Maintenance Needs Allowance (MMMNA);
  - d. An amount for medical or remedial services as specified in R9-28-408; and
  - e. An amount for Medicare and other health insurance premiums, deductibles, or coinsurance not subject to third-party reimbursement.

**D. Transfers.**

1. The institutionalized spouse may transfer to any of the following an amount of resources equal to the CSRD without affecting eligibility under 42 U.S.C. 1396r-5(f). The institutionalized spouse may transfer resources to:
  - a. The community spouse; or
  - b. Someone other than the community spouse if the resources are for the sole benefit of the community spouse.
2. The institutionalized spouse is allowed a period of 12 consecutive months, beginning with the first month of eligibility, to transfer resources in excess of the resource standard in R9-28-407~~(E)(2)~~ to the persons listed in subsection (D)(1).
3. All other transfers by the institutionalized person or transfers by the community spouse are treated under the provisions in R9-28-409.

**E. Specific hearing rights as described under 9 A.A.C. 34 apply to a person whose eligibility is determined under this Section.**

1. The institutionalized spouse or the community spouse is entitled to a fair hearing if dissatisfied with the determination of any of the following:
  - a. The community spouse monthly income allowance,
  - b. The amount of monthly income allocated to the community spouse,
  - c. The computation of the spousal share of resources,
  - d. The attribution of resources, or
  - e. The CSRD.
2. The hearing officer may increase the amount of the MMMNA if either the community spouse or institutionalized spouse establishes that the community spouse needs income above the established MMMNA due to exceptional circumstances.
3. The hearing officer may increase the amount of the CSRD to allow the community spouse to retain enough resources to generate income to meet the MMMNA. The hearing officer may allow the community spouse

to retain an amount of resources necessary to purchase a single premium life annuity that would furnish monthly income sufficient to bring the community spouse's total monthly income up to the MMMNA.

#### **R9-28-411. Changes, Redeterminations, and Notices**

##### **A. Reporting and verifying changes.**

1. A person shall report to the ALTCS eligibility office the following changes for a person, a person's spouse, or a person's dependent children under 42 CFR 435.916:
  - a. A change of address;
  - b. An admission to or discharge from a medical facility, public institution, or private institution;
  - c. A change in the household's composition;
  - d. A change in income;
  - e. A change in resources;
  - f. A determination of eligibility for other benefits;
  - g. A death;
  - h. A change in marital status;
  - i. An improvement in the person's medical condition;
  - j. A change in school attendance;
  - k. A change in Arizona state residency;
  - l. A change in citizenship or alien status;
  - m. Receipt of an SSN under ~~R9-28-405~~ R9-22-305;
  - n. A transfer of assets under R9-28-409;
  - o. A change in trust income and disbursements in accordance with state and federal law;
  - p. A change in first- or third-party liability that may be responsible for payment of all or a portion of the person's medical costs;
  - q. A change in first-party medical insurance premiums;
  - r. A change in the household expenses used to calculate the community spouse monthly income allowance described in R9-28-410;
  - s. A change in the amount of the community spouse monthly income allowance that is provided to the community spouse by the institutionalized spouse under R9-28-410; and
  - t. Any other change that may affect the person's eligibility or share-of-cost.
2. A change shall be reported either orally or in writing ~~and shall include as described under R9-22-306:~~
  - a. ~~The name of the affected person;~~
  - b. ~~The change;~~
  - c. ~~The date the change happened;~~
  - d. ~~The name of the person reporting the change; and~~
  - e. ~~The person's Social Security or case number, if known, under A.R.S. § 36-2934.~~

- ~~3. A person shall provide verification of changes upon request, under A.R.S. § 36-2934, if needed to redetermine eligibility or to re-calculate post-eligibility computation of income.~~
- ~~4. A person shall report anticipated changes in advance, as soon as the future event becomes known.~~
- ~~5. A person shall report other changes events within 10 days of the date the change occurred.~~

**B. Processing of changes and redeterminations.** A person's eligibility shall be redetermined at least one time every 12 months and when changes occur, under 42 CFR 435.916. A person's share-of-cost, specified in R9-28-408, shall be redetermined whenever a change occurs that may affect the post-eligibility computation of income.

**C. Actions that may result from a redetermination or change.** Processing a redetermination or change shall result in one of the following findings:

1. No change in eligibility or the post-eligibility computation of income;
2. Discontinuance of eligibility if a condition of eligibility is no longer met;
3. Suspension of eligibility if a condition of eligibility is temporarily not met;
4. A change in the post-eligibility computation of income and the person's share-of-cost; or
5. A change in service from ALTCS to ALTCS acute care services, or from ALTCS acute care services to ALTCS, caused by changes in a person's living arrangement, specified in R9-28-406, or a transfer of assets specified in R9-28-409.

**D. Notices.**

1. Contents of notice. The Administration shall issue a notice when an action is taken regarding a person's eligibility or computation of share-of-cost. The notice shall contain the following information:
  - a. A statement of the action being taken;
  - b. The effective date of the action;
  - c. The specific reason for the intended action;
  - d. The actual figures used in the eligibility determination and specify the amount by which the person exceeds income standards if eligibility is being discontinued because either a person's resources exceed the resource limit ~~specified in R9-28-407(E)~~, or a person's income exceeds the income limit ~~specified in R9-28-408(E)~~;
  - e. The specific law or regulation that supports the action, or a change in federal or state law that requires an action;
  - f. An explanation of a person's right to request an evidentiary hearing as described under 9 A.A.C. 34; and
  - g. An explanation of the date by which a request for hearing must be received so that eligibility or the current share-of-cost may be continued.
2. Advance notice of changes in eligibility or share-of-cost. "Advance notice" means a notice that is issued to a person at least 10 days before the effective date of change, ~~under 42 CFR 435.919~~. Except as specified in subsection (D)(3), advance notice shall be issued whenever the following adverse action is taken:
  - a. To discontinue or suspend eligibility if an eligible person no longer meets a condition of eligibility, either ongoing or temporarily;
  - b. To affect post-eligibility computation of income and increase a person's share-of-cost; or

- c. To reduce benefits from ALTCS to ALTCS acute care services due to a change from a long-term care living arrangement to an acute care living arrangement, specified in R9-28-406(B), or due to a transfer with uncompensated value, specified in R9-28-409.
3. ~~Under 42 CFR 431.213, notice shall be issued to a person to discontinue eligibility or to increase the share of cost;~~ Adverse actions. An applicant or member may appeal, as described under 9 A.A.C. 34, by requesting a hearing from the Administration or its designee concerning any of the adverse actions if:
- ~~no later than the effective date of action if:~~
    - a. A person provides a clear, written statement, signed by the person, that a person no longer desires services;
    - b. A person provides information that requires termination of eligibility or an increase in the share-of-cost and the person signs a clear written statement waiving advance notice;
    - c. A person cannot be located and mail sent to that person has been returned as undeliverable;
    - d. A person has been admitted to a public institution where the person is ineligible for ALTCS under R9-28-406; or
    - e. A person has been approved for Medicaid in another state;
    - f. The Administration has information that confirms the death of the person;
    - g. The person's primary care provider has prescribed a change in the level of medical care; or
    - h. The notice involves an adverse determination regarding the PAS, specified in A.R.S. § ~~36-2536~~ 36-2936.
- E. Transitional.** HCBS services may be provided to a person who is no longer at risk of institutionalization but who continues to require significant long-term care services under A.R.S. § 36-2936(D).

**R9-28-413. Enrollment with an ~~EPD~~ Elderly and Physically Disabled (EPD) Program Contractor**

- A.** A member's enrollment with ~~one~~ an EPD program contractor. The Administration shall enroll an ALTCS elderly or physically disabled member with ~~the one~~ an EPD program contractor assigned to that GSA.
- B.** New member makes a choice of an EPD program contractor ~~on or after October 1, 2000~~. The Administration shall provide a new member an opportunity to choose an EPD program contractor, if an ALTCS member is elderly or physically disabled, and lives in a GSA served by more than one EPD program contractor.
- C.** New member who makes no choice of an EPD program contractor ~~on or after October 1, 2000~~. The Administration shall enroll an elderly or physically disabled new member that lives in a GSA with more than one EPD program contractor and who makes no choice of an EPD program contractor under the following:
  - 1. Criteria. The Administration will prioritize enrollment based on continuity of care and enroll a member with an EPD program contractor chosen under the following criteria, including but not limited to:
    - a. A member's living arrangement, and
    - b. A member's primary care practitioner.
  - 2. Algorithm. The Administration shall enroll a member through an algorithm as specified in contract, when a member has a choice of more than one EPD program contractor and the criteria in subsection (C)(1) does not apply.



~~D. A member enrolled with an EPD program contractor prior to October 1, 2000, and is enrolled in the system after October 1, 2000.~~

~~1. Choice. The Administration shall request an existing member residing in a GSA with more than one EPD program contractor to choose an EPD program contractor.~~

~~2. A member makes no choice. If a member makes no choice, the Administration will continue enrollment with a member's existing EPD program contractor. If that existing EPD program contractor is not awarded a bid, the member will be enrolled with an EPD program contractor as specified in Section (C).~~

#### **R9-28-414. Enrollment with the DD Program Contractor**

~~A. A member's DD program contractor. The Administration shall enroll a member including an American Indian with the DES Division of Developmental Disabilities as specified in A.R.S. § 36-2940, if the ALTCS member is eligible for services for the developmentally disabled services.~~

~~B. Indian on and off reservation. The Administration shall enroll an Indian ALTCS member who is developmentally disabled, with the DES Division of Developmental Disabilities. This enrollment shall be made whether the member is considered to be residing on or off reservation.~~

#### **R9-28-415. Enrollment with a Tribal Program Contractor**

A. On-reservation. Notwithstanding R9-28-412, the Administration shall enroll ~~a Native American~~ an American Indian ALTCS member who is elderly or physically disabled with the ALTCS tribal program contractor as specified in A.R.S. § 36-2932 if the person:

1. Lives on-reservation of a tribe participating as an ALTCS tribal program contractor, or

2. Lived on-reservation of a tribe participating as an ALTCS tribal program contractor immediately prior to placement in an off-reservation NF or alternative HCBS setting.

B. Off-reservation. The Administration shall enroll ~~a Native American~~ an American Indian ALTCS member who is elderly or physically disabled with an EPD program contractor under R9-28-413, if the member lives off-reservation, and does not have on-reservation status as specified in subsection (A)(2).

#### **R9-28-416. Enrollment with the ~~FFS~~ Fee-for-Service (FFS) Program**

A. No tribal or EPD program contractor in GSA. The Administration shall enroll an ALTCS elderly or physically disabled member who resides in an area with no ALTCS tribal program contractor or EPD program contractor in the AHCCCS FFS program under A.R.S. § 36-2945.

B. Prior period coverage. The Administration shall enroll a member in AHCCCS fee-for-service program if a member is eligible for ALTCS services only during prior period coverage.

C. The Administration shall enroll a member in AHCCCS fee-for-service program if the member is eligible for ALTCS services during the prior quarter period.

#### **R9-28 418. Disenrollment**

The Administration shall disenroll an ALTCS member on the last day of the month following receipt of appropriate notification under R9-28-411 except:

1. The Administration shall disenroll an ALTCS member who dies. A member's last day of enrollment shall be the date of death.
2. The Administration ~~may~~ shall disenroll a member immediately ~~if requested~~ when the member voluntarily withdraws from the ALTCS program.
3. If ALTCS benefits have been continued pending an eligibility appeal decision and the discontinuance is upheld as specified in 9 A.A.C. 34, the Administration shall disenroll a member effective on the date of the hearing decision.