

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

ARIZONA LONG-TERM CARE SYSTEM

PREAMBLE

| <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action:</u> |
|---|----------------------------------|
| R9-28-1101 | Amend |
| R9-28-1102 | Amend |
| R9-28-1103 | Amend |
| R9-28-1104 | Amend |
| R9-28-1105 | Amend |
| R9-28-1106 | Amend |
| R9-28-1107 | Repeal |

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. §§ 36-2903.01(F), 36-2932(M)

Implementing statute: A.R.S. §§ 36-2903.01(F), 36-2907, 36-2907(F) and Laws 2013, First Special Session, Chapter 10, §13.

3. The effective date of the rule:

The agency selected an effective date of 60 days from the date of filing with the Secretary of State as specified in A.R.S. § 41-1032(A).

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. 2184, August 15, 2014

Notice of Proposed Rulemaking: 20 A.A.R. 2172, August 15, 2014

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

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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

HB 2634 (Law 2011, Chapter 96) requires the Arizona Department of Health Services (ADHS) to reduce monetary or regulatory costs on persons or individuals receiving behavioral health services, streamline the regulation process, and facilitate licensure of integrated health programs that provide both behavioral and physical health services.

The Administration cross references ADHS rules and must update its rules to correctly reference changes made by ADHS. In addition, changes recommended during a 5 year review , report effective November 3, 2009, of these rules have also been made along with any technical changes required to make the rulemaking clear. Such as:

R9-28-1101 – Clarified by:

- Making this section specific to definitions that apply to this Article, and removing the references to statute in Subsections (1) and (2).
- Moving subsection (4), (6), (7), and (8) to a new rule describing the ALTCS BH requirements that apply to an American Indian would be clearer.
- Where the term “Native American” is used, it should be replaced with the term “American Indian” which is culturally sensitive and used by federal law.

R9-28-1102 – Clarified:

- Subsections (A) and (B) where it refers to “provide” behavioral health services; program contractors or tribal contractors do not provide behavioral health services, they arrange for the provision of these services.
- Subsection (D) needs the term “medically necessary” added to the sentence that begins “shall authorize (insert)...behavioral health services”.

R9-28-1104 - After review of this rule, the Administration recommends an amendment to this rule to make it concise by removing or updating:

- Subsection (A), which defines behavioral health services, already exists in R9-22-1201 and R9-20-101.
- Subsection (G), describing the notification to the Administration for Native Americans, should be moved to a rule that specifies the ALTCS BH requirements that apply to an American Indian.
- Subsection (K), describing that EPSDT services include covered behavioral health services, should be removed since the requirement to provide behavioral health services to an EPSDT member is referred to in R9-22-213 as cross-referenced by R9-28-202.
- Subsection (L), describing that experimental services are for purposes of research and not a behavioral health service, can be removed since the same information is defined in R9-22-101 and described in R9-22-202 and cross-referenced by R9-28-202.
- Subsection (M), describing gratuities as a non-covered service, can be removed since this provision is already addressed in R9-22-202 and cross-referenced by R9-28-202.

R9-28-1106 – After review of this rule, the Administration recommends that the title of the rule be changed to “Standards for Service Providers”.

Certain recommended changes were not made as described in the 5 year report approved in November 2009, such as:

R9-28-1101 - Subsection (5) placement in R9-28-1102 was not made since R9-28-1102 does not refer to case management responsibilities.

R9-28-1102 - The part of Subsection (B) that refers to an “EPD Native American member residing...” recommended to be replaced with “...an individual enrolled with behavioral health services” was no longer necessary since after reading the verbiage of the section it was clear. All AHCCCS individuals receive behavioral health services and are not “enrolled”.

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 the 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 minimal economic impact on the implementing agency, small businesses and consumers; because this rulemaking was made for clarification and technical changes required as a result of ADHS rule changes. The changes made in this proposed rulemaking are not substantive changes.

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. The changes that were made were as a result of recommendations made by GRRC staff.

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 on September 15, 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:

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:

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:

NOTICE OF FINAL RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ARIZONA LONG-TERM CARE SYSTEM
ARTICLE 11. BEHAVIORAL HEALTH SERVICES

Section

R9-28-1101. General Requirements

R9-28-1102. ~~Program~~ ALTCS Contractor or Tribal Contractor Responsibilities

R9-28-1103. Eligibility for Covered Services

R9-28-1104. General Service Requirements

R9-28-1105. Scope of Behavioral Health Services

R9-28-1106. ~~General Provisions and~~ Standards for Service Providers

R9-28-1107. ~~General Provisions for Payment~~ Repeal

ARTICLE 11. BEHAVIORAL HEALTH SERVICES

R9-28-1101. General Requirements

General requirements. The following general requirements apply to behavioral health services provided under this Article, and Chapter 22 subject to all exclusions and limitations.

- ~~1. Administration. The program shall be administered under A.R.S. § 36-2932.~~
- ~~2. Provision of services. Behavioral health services shall be provided under A.R.S. § 36-2939, this Chapter and 9 A.A.C. 22, Article 12, as applicable.~~

~~3.1.~~ Definitions. The definitions in A.A.C. R9-22-1201 and ~~R9-22-102~~ R9-22-101 apply to this Article, in addition to the following definitions:

~~"Case management" means the activities described in R9-28-510.~~

"Case manager" means an individual responsible for coordinating the physical health services or behavioral health services provided to a patient at the health care institution.

"Contractor" means an ALTCS contractor or as previously known as program contractor.

"Cost avoid" means the same as in A.A.C. R9-22-1201.

"Intergovernmental agreement" or "IGA" means an agreement for services or joint or cooperative action between the Administration and a tribal contractor.

"Qualified behavioral health service provider" means a behavioral health service provider that meets the requirements of R9-28-1106.

"Tribal contractor" means a tribal organization (The Tribe) or urban Indian organization defined in 25 U.S.C. 1603 and recognized by CMS as meeting the requirements of 42 U.S.C. 1396d(b), that provides or is accountable for providing the services or delivering the items described in the intergovernmental agreement.

~~4. Enrollment of Native American member. The Administration shall enroll an EPD Native American member with a tribal contractor on a FFS basis if:~~

~~a. The member lives on reservation of a Native American tribal organization that is an ALTCS tribal contractor, or~~

~~b. The member lived on reservation of a Native American tribal organization that is an ALTCS tribal contractor immediately before placement in an off-reservation Nursing Facility or an alternative HCBS setting.~~

- ~~5.2.~~ Case management. A tribal contractor shall provide case management services to FFS ~~Native American~~ American Indian members living on or off-reservation as delineated in the IGA.
- ~~6.~~ ~~Services.~~ A tribal contractor or the Administration may authorize behavioral health services for FFS ~~Native American~~ members enrolled with a tribal contractor as delineated in the intergovernmental agreement.
- ~~7.~~ ~~Enrollment of Native American members off-reservation.~~ Except as provided in R9-28-1101(4)(b), an EPD ~~Native American~~ who resides off reservation shall be enrolled with an ALTCS program contractor to receive behavioral health services, including case management, under R9-28-415.
- ~~8.~~ ~~Enrollment of developmentally disabled Native American member.~~ A developmentally disabled ~~Native American~~ member who resides on or off reservation shall be enrolled with the Department of Economic Security's Division of Developmental Disabilities under R9-28-414 and shall receive behavioral health services from the Department of Economic Security's Division of Developmental Disabilities.
- ~~9.3.~~ Reimbursement. For FFS ~~Native Americans~~ American Indians, the Administration is exclusively responsible for providing reimbursement for covered behavioral health services that are authorized by a tribal contractor or the Administration under the intergovernmental agreement as specified in this Article. A ~~program~~ contractor is exclusively responsible for providing reimbursement for covered behavioral health services that are authorized by a ~~program~~ contractor as specified in this Article.

R9-28-1102. ~~Program~~ ALTCS Contractor or Tribal Contractor Responsibilities

- A.** ~~Program~~ ALTCS contractor. A ~~program~~ contractor shall ~~provide~~ arrange for behavioral health services to all enrolled members, including ~~Native American~~ American Indian members who are not enrolled with a tribal contractor ~~under R9-28-1101~~.
- B.** Tribal contractor. A tribal contractor shall provide behavioral health services to a ~~Native American~~ American Indian member who is enrolled with a tribal contractor as prescribed in R9-28-1101. When a tribal contractor determines that an EPD ~~Native American~~ American Indian member residing on a reservation needs behavioral health services under R9-28-415, the member shall receive services as authorized by the Administration or a tribal contractor under A.A.C. R9-22-1205 from any AHCCCS-registered provider.

- C. A program or tribal contractor shall cooperate when a transition of care occurs and ensure that medical records are transferred in accordance with A.R.S. §§ 36-2932, 36-509, and R9-28-514 when a member transitions from:
1. A behavioral health provider to another behavioral health provider,
 2. A RBHA or TRBHA to a ~~program~~ contractor,
 3. A ~~program~~ contractor or tribal contractor to a RBHA or TRBHA, or
 4. A ~~program~~ contractor to a tribal contractor or vice versa.
- D. The Administration, a tribal contractor, or a ~~program~~ contractor, as appropriate, shall authorize medical necessary behavioral health services for ~~Native American~~ American Indian members.

R9-28-1103. Eligibility for Covered Services

- A. Eligibility for covered services. A member determined eligible under A.R.S. § 36-2934 shall receive medically necessary covered services specified in ~~A.A.C. R9-22-1205 and R9-28-202~~ under Chapter 22, Article 2 and 12.
- B. ~~Limitations.~~ Behavioral health services are covered as specified in ~~A.A.C. R9-22-201 and R9-22-1205~~ Chapter 22, Article 2 and 12.

R9-28-1104. General Service Requirements

- A. Services. Behavioral health services include both mental health and substance abuse services and are subject to the provisions under Chapter 22, Article 2 and 12.
- B. Enrollment of American Indian member. The Administration shall enroll an EPD American Indian member with a tribal contractor on a FFS basis if:
1. The member lives on-reservation of a American Indian tribal organization that is an ALTCS tribal contractor, or
 2. The member lived on-reservation of a American Indian tribal organization that is an ALTCS tribal contractor immediately before placement in an off-reservation Nursing Facility or an alternative HCBS setting.
- C. Services. A tribal contractor or the Administration may authorize behavioral health services for FFS American Indian members enrolled with a tribal contractor as delineated in the intergovernmental agreement.
- D. Enrollment of American Indian members off-reservation. Except as provided in R9-28-1104(B)(2), an EPD American Indian who resides off-reservation shall be enrolled with an

ALTCS contractor to receive behavioral health services, including case management, under R9-28-415.

- E.** Enrollment of developmentally disabled American Indian member. A developmentally disabled American Indian member who resides on or off-reservation shall be enrolled with the Department of Economic Security's Division of Developmental Disabilities under R9-28-414 and shall receive behavioral health services from the Department of Economic Security's Division of Developmental Disabilities.
- ~~**B.** Prior authorization for emergency behavioral health services. A provider is not required to obtain prior authorization for emergency behavioral health services.~~
- ~~**C.** Prohibition against denial of payment. A program contractor, tribal contractor, or the Administration shall not limit or deny payment to an emergency behavioral health provider for emergency behavioral health services to a member for the following reasons:~~
- ~~1. On the basis of lists of diagnoses or symptoms,~~
 - ~~2. Prior authorization was not obtained, or~~
 - ~~3. The provider does not have a contract.~~
- ~~**D.** A program contractor or the Administration shall not limit or deny payment to an emergency behavioral health provider for emergency behavioral health services provided to a member if the member received those services as directed by an employee of the program contractor or the Administration.~~
- ~~**E.** Grounds for denial for persons enrolled with a program or tribal contractor. A program contractor or the Administration may deny payment to an emergency behavioral health provider for emergency behavioral health services for reasons including but not limited to the following:~~
- ~~1. The claim was not a clean claim,~~
 - ~~2. The claim was not submitted timely, or~~
 - ~~3. The provider failed to provide timely notification to the Administration or the program contractor, as applicable.~~
- ~~**F.** Notification to program contractor for persons enrolled with a program contractor. A hospital, emergency room provider, or fiscal agent shall notify a program contractor no later~~

~~than the 11th day from presentation of the member enrolled with a program contractor for emergency inpatient behavioral health services.~~

~~**G.** Notification to Administration for Native Americans enrolled with a tribal contractor. A provider shall notify the Administration no later than 72 hours after a Native American member enrolled with a tribal contractor presents to a hospital for inpatient emergency behavioral health services.~~

~~**H.** Behavioral health evaluation. Subject to A.R.S. § 36-545.06 and R9-28-903, an emergency behavioral health evaluation is covered as an emergency service for a member under this Section if:~~

- ~~1. Required to evaluate or stabilize an acute episode of mental disorder or substance abuse; and~~
- ~~2. Provided by a qualified provider who is a behavioral health medical practitioner as defined in A.A.C. R9-22-1201, including a licensed psychologist, a licensed clinical social worker, a licensed professional counselor, or a licensed marriage and family therapist.~~

~~**I.** Post-stabilization requirements for members enrolled with a program contractor.~~

- ~~1. A program contractor is financially responsible for behavioral health post-stabilization services obtained within or outside the network that have received prior authorization from the program contractor.~~
- ~~2. The program contractor is financially responsible for behavioral health post-stabilization services obtained within or outside the network that have not received prior authorization from the program contractor, but are administered to maintain the member's stabilized condition within one hour of a request to the program contractor for prior authorization of further post-stabilization services;~~
- ~~3. The program contractor is financially responsible for behavioral health post-stabilization services obtained within or outside the network that have not received prior authorization from the program contractor, but are administered to maintain, improve, or resolve the member's stabilized condition if:
 - ~~a. The program contractor does not respond to a request for prior authorization within one hour;~~~~

- ~~b. The program contractor authorized to give the prior authorization cannot be contacted; or~~
 - ~~e. The representative of the program contractor and the treating physician cannot reach an agreement concerning the member's care and the program contractor's physician is not available for consultation. The treating physician may continue with care of the member until the program contractor's physician is reached; or:
 - ~~i. A program contractor's physician with privileges at the treating hospital assumes responsibility for the member's care;~~
 - ~~ii. A program contractor's physician assumes responsibility for the member's care through transfer;~~
 - ~~iii. A representative of the program contractor and the treating physician reach agreement concerning the member's care; or~~
 - ~~iv. The member is discharged.~~~~
- ~~4. Transfer or discharge. The attending physician or the provider actually treating the member for the emergency behavioral health condition shall determine when the member is sufficiently stabilized for transfer or discharge and that decision shall be binding on the program contractor.~~
- ~~**J.** Prior authorization for non-emergency behavioral health services. When a member's behavioral health condition is determined by the provider not to require emergency behavioral health services, the provider shall follow the program contractor's or the Administration's prior authorization requirements.~~
- ~~**K.** E.P.S.D.T. services. For Title XIX members under age 21, E.P.S.D.T. services shall include all medically necessary Title XIX covered behavioral health services to a member.~~
- ~~**L.** Experimental services. Experimental services and services that are provided primarily for the purpose of research are not covered.~~
- ~~**M.** Gratuities. A service or an item, if furnished gratuitously to a member by a provider, is not covered and payment to a provider shall be denied.~~
- ~~**N.** GSA. Behavioral health services rendered to a member enrolled with a program contractor shall be provided within the program contractor's GSA except when:
 - ~~1. A primary care provider refers a member to another area for medical specialty care;~~
 - ~~2. A member's medically necessary covered service is not available within the GSA;~~~~

3. ~~A net savings in behavioral health service delivery costs can be documented by the program contractor for a member. Undue travel time or hardship shall be considered for a member or a member's family; or~~
4. ~~A member is placed by the program contractor in a NF or an Alternative HCBS setting located out of the program contractor's GSA, but remains enrolled with that program contractor.~~

~~**O. Travel.** If a member travels or temporarily resides outside of a program contractor's GSA, covered services are restricted to emergency behavioral health care, unless authorized by the member's program contractor.~~

~~**P. Non-covered services.** If a member requests a behavioral health service that is not covered or is not authorized by a program contractor, the tribal contractor, or the Administration, the behavioral health service may be provided by an AHCCCS registered behavioral health service provider according to A.A.C. R9-22-702.~~

~~**Q. Restrictions and limitations.**~~

1. ~~The restrictions, limitations, and exclusions in this Article do not apply to a program contractor that elects to provide a noncovered service.~~
2. ~~Room and board is not a covered service unless provided by the Administration or a program contractor in a Level 1, inpatient, sub-acute, or residential center under A.A.C. R9-22-1205.~~

R9-28-1105. Scope of Behavioral Health Services

~~**A. Scope of Services.** The provisions of A.A.C. R9-22-1205 are the scope of behavioral health services for a member under this Article. A member in an institutional or Alternative HCBS setting as defined in R9-28-101 may receive covered behavioral health therapeutic home care services from a program contractor.~~

~~**B. Applicability.** References in A.A.C. R9-22-1205 to ADHS/DBHS apply to a program contractor.~~

R9-28-1106. General Provisions and Standards for Service Providers

A. Applicability. The provisions of A.A.C. R9-22-1206 are the general provisions and standards for service providers. References in A.A.C. R9-22-1206 to ADHS/DBHS or to a RBHA apply to a program contractor.

B. Qualified service provider. A qualified behavioral health service provider shall:

- ~~1. Have all applicable state licenses or certifications, or comply with alternative requirements established by the Administration;~~
- ~~2. Register with the Administration as a behavioral health service provider; and~~
- ~~3. Comply with all requirements under Article 5 and this Article.~~

B. ~~The Administration or a contractor shall cost avoid any behavioral health service claims if the Administration or the contractor establishes the probable existence of first-party liability or third-party liability.~~

C. ~~Quality and utilization management.~~

- ~~1. Service providers shall cooperate with the program contractor's quality and utilization management programs and the Administration as under R9-28-511 and in contract.~~
- ~~2. Service providers shall comply with applicable procedures under 42 CFR 456, incorporated by reference in A.A.C. R9-22-1206.~~

R9-28-1107. General Provisions for Payment Repeal

A. ~~Prior authorization. For ALTCS members enrolled with a program contractor, payment to a provider for behavioral health services that require prior authorization may be denied as specified in R9-22-705. References in A.A.C. R9-22-705 to a contractor apply to a program contractor.~~

B. ~~For ALTCS FFS members, payment to a provider for behavioral health services that require prior authorization may be denied if a provider does not obtain prior authorization from a tribal contractor or the Administration, as applicable.~~

C. ~~The Administration or a program contractor shall cost avoid any behavioral health service claims if the Administration or the program contractor establishes the probable existence of first-party liability or third-party liability.~~