NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION – ADMINISTRATION

PREAMBLE

1. Article, Part, or Section Affected (as applicable) **Rulemaking Action:**

R9-22-303 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. §§ 36-2903.01, 36-2903, 36-2932

Implementing statutes: A.R.S. §§ 36-2904, 36-2933

3. The effective date of the rule:

AHCCCS requests an immediate effective date under A.R.S. § 41-1032(A)(2). Since the change in rule would be precipitated by CMS granting AHCCCS's waiver request, the rule would need to change as expeditiously as possible in order to align with CMS's record of the AHCCCS program in the waiver documentation.

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: 24 A.A.R. 2703, September 28, 2018

Notice of Proposed Rulemaking 24 A.A.R. 2663, September 28, 2018

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

Name: Nicole Fries

Address: AHCCCS
Office of Administrative Legal Services
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034

Telephone: (602) 417-4232

Fax: (602) 253-9115

E-mail: AHCCCSRules@azahcccs.gov

Web site: www.azahcccs.gov

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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking: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 in the process of requesting a waiver from CMS from implementing the federal prior quarter coverage eligibility requirement specified in 42 CFR 435.915. Therefore, AHCCCS is requesting authorization to initiate the process of repealing and amending rules regarding prior quarter coverage so that the repeal can be implemented expeditiously upon federal approval. CMS has recently approved similar prior quarter coverage waiver requests submitted by several other State Medicaid Agencies. Failure to amend and repeal AHCCCS prior quarter coverage to conform to an approved waiver will impair the Agency's ability to further the objectives of the Medicaid Act and will also result in continued expenditures by AHCCCS for the substantial administrative and operational costs associated with implementation of the prior quarter coverage eligibility process for the low percentage of AHCCCS members who qualify for prior quarter coverage eligibility.

More specifically, 42 CFR 435.915 requires the Administration to provide Prior Quarter (PQ) eligibility for persons who qualify for Title XIX eligibility in any one of the three previous months prior to application. While A.R.S. § 36-2903(A) provides that the system's reimbursement responsibility is prospective from the date of the eligibility determination, AHCCCS has implemented prior quarter coverage to ensure federal financial participation for Arizona's Medicaid Program. Although AHCCCS had previously obtained federal approval waiving compliance from prior quarter coverage eligibility, as of January 1, 2014, AHCCCS was required by CMS to implement prior quarter eligibility. However, the Administration is seeking a new waiver from CMS so that the Administration is not required to provide Title XIX eligibility for any of the three previous months prior to the month of application.

Repealing quarter coverage promotes the objectives of title XIX by encouraging beneficiaries to obtain and maintain health coverage, even when healthy. Incentivizing members to retain health care coverage will increase continuity of care by reducing gaps in coverage for Medicaid beneficiaries who subsequently lose coverage or who sign up for Medicaid only when sick. Additionally, AHCCCS is requesting an exemption from the waiver for children under age 19, individuals who are pregnant and those in the 60-day post-partum period beginning with the last day of pregnancy. Because the prior quarter coverage eligibility process is resource-intensive, repealing prior quarter coverage eligibility will allow the Agency to utilize resources more effectively and efficiently.

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:

The rulemaking will not diminish a previous grant of authority of a political subdivision.

9. A summary of the economic, small business, and consumer impact:

In fiscal year 2017, AHCCCS reimbursed providers for member expenses that met the qualification of prior quarter coverage to the cost of $21, 347,700. A large portion of those funds are received from the federal government as federal financial participation. If the rulemaking changes are made, the savings would be beneficial to the state as well as other political subdivisions that contribute to these funds.

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

There were no changes between the proposed and final rulemaking.

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

Comment From and Date rec'd.	Comment	Agency Response
Ellen Sue Katz 03/15/18 On behalf of Arizona Center for Disability Law, Arizona Center for Law in the Public Interest, and the William E. Morris Institute for Justice	Dear Office of Administrative Legal Services: The Arizona Center for Disability Law ("ACDL"), Arizona Center for Law in the Public Interest ("Center") and William E. Morris Institute for Justice ("Institute") submit these comments to the Arizona Health Care Cost Containment System ("AHCCCS") rulemaking to eliminate prior quarter coverage as required by 42 C.F.R. § 435.915 from the state Medicaid program, the Arizona Long Term Care System ("ALTCS") and the Medicare Cost Sharing Program. The ACDL is the protection and advocacy program in Arizona and works on issues concerning access to health care for persons with disabilities. The, Center is a public interest law firm that has a major focus on access to health care issues. The Institute is a non-profit program that advocates on behalf of low income Arizonans. As part of our work, we focus on public benefit programs, such as Medicaid. The ACDL, Center and Institute strongly supported Arizona's decision to restore Medicaid services to the Proposition 204 adults and to expand Medicaid to all persons with incomes up to 138% of the federal poverty level, with income disregard of 5%. Arizona's restoration and expansion have been highly successful. Approximately 1.9 million persons are on AHCCCS as of January 2018. www.azahcccs.gov/Resources/Downloads/PopulationStatistics/2018/Jan/AHCCCS_Populations_by_Category.pdf. Of this number, 313,000 are the Proposition 204 population (0-100% of federal poverty level) and 80,300 are the adult expansion (100-133% of the federal poverty level). AHCCCS' rulemaking proposes to eliminate prior quarter coverage	AHCCCS thanks Ms. Katz for her comments and her ongoing involvement with AHCCCS' member populations. AHCCCS has requested a waiver to make changes to its Title XIX program. The purpose of the waiver from prior quarter coverage, and the corresponding repeal of the prior quarter coverage rules, are to further the objectives of the Medicaid Act. Although, the approval of the prior quarter coverage waiver will result in decreased cost to the State, the request was not submitted exclusively as a cost-saving measure. The waiver amendment is intended to promote

	required by 42 U.S.C. § 1396a(a)(34) and 42 C.F.R. § 435.915. Prior quarter coverage provides applicants for medical coverage with eligibility starting the date of application and going back up to three, months as long as the person was eligible for coverage. The agency's justification for the proposed rulemaking is that it has requested a waiver of this requirement from the federal government pursuant to 42 U.S.C. § 1315(a), and on the assumption that if the waiver is granted, AHCCCS wants to implement the change without any delay. AHCCCS' sole reason for the rulemaking is to save money. In fiscal year 2017, AHCCCS states it reimbursed medical providers $21,347,700 for prior quarter coverage. Of this amount only 9% ($1,983,800) came from the state funds because of the high reimbursement rate provided by the federal government. AHCCCS proposes to repeal Prior Quarter Eligibility from the state Medicaid program in R9-22-303 and R9-22-19 l O (Freedom to Work) and amend by deletion the requirement or a reference to the requirement from R9-22-202 (F)(4), R9-22-703(H), R22-1202(D)(l) and R9-22-1501(F). For the ALTCS program, AHCCCS proposes to amend R9-28-401.0l(D)(l). Finally, for the Medicare Cost Sharing Program, AHCCCS proposes to ame11d R9-29-210(C) For the reasons below, the ACDL, Center and the Institute request that the proposed rulemaking not be approved. **I. Prior Quarter Coverage is an Important Part of the Medicaid, ALTCS and Medicare Cost Sharing Programs** When the Medicaid retroactive coverage guarantee was established in 1972, the Senate Finance Committee noted that the provision would "protect[] persons who are eligible for [M]edicaid but do not apply for assistance until after they have received care, either because they did not know about the [M]edicaid eligibility requirements or because the sudden nature of their illness prevented their applying." Senate Report No. 92-1230 at 209 (Discussing Section 255 of H.R. 1) (Sept. 26, 1972). This statement is just as true now as it was 45 'years ago. A person in need of health care cannot be expected to make instantaneous applications for Medicaid coverage. She may be hospitalized after an accident or unforeseen medical emergency. She may also be unfamiliar with Medicaid, or unsure about' when her declining financial resources might fall within the Medicaid eligibility threshold. The three-month retroactivity window is a rational and humane response to these concerns. Retroactive eligibility is only available to persons who meet Medicaid eligibility standards for the month[s] in question. The same arguments apply to the AL TCS and Medicare Cost Sharing programs. Because all the affected persons are low-income and Medicaid eligible, elimination of the prior quarter coverage will simply shift the cost of care to medical facilities who with reduced funding for uncompensated care, may not be able to obtain reimbursement. With the expansion of Medicaid coverage to more persons, the Affordable Care· Act ("ACA") intended to reduce the number of	the objectives of Title XIX by encouraging beneficiaries to obtain and maintain health coverage, even when healthy. The Administration believes this will improve continuity of care by reducing gaps in coverage when beneficiaries previously would transition often on and off Medicaid or sign up for Medicaid only when sick. Specifically, for those who are aged, blind or disabled, or who may need long-term services and supports through Medicaid, this waiver will encourage beneficiaries to apply for Medicaid when they believe they meet the criteria for eligibility to ensure primary or secondary coverage through Medicaid to receive these services when the need arises. This waiver amendment will improve the alignment between Medicaid and commercial coverage to facilitate smoother beneficiary transition. Because the prior quarter coverage eligibility process is resource-intensive, repealing prior quarter coverage eligibility will allow the Agency to utilize resources more effectively and efficiently. The federal funds Ms. Katz is concerned will no longer be available to the Administration

	persons who were uninsured. Correspondingly, the ACA also reduced the Disproportionate Share Hospital Program ("DSH") that provided additional funds to hospitals for uncompensated care under Medicaid and Medicare. *See* "Q and A: Disproportionate Share Hospital Payments and the Medicaid Expansion." https://www.healthlaw.org/issues/medicaid/qadisporpotionate-share-hospital-payinents-and-the-medicaid-expansion. This proposed rulemaking conflicts with that intent to provide coverage directly on behalf of the uninsured and, instead, will result in more medical facilities providing uncompensated care with no available federal funds to cover their costs. Finally, this proposal is very short-sighted. While in one year, the state may save $1,983,800, it will forgo approximately 20 million dollars in federal payments that could provide medical care for persons all over the state. To spend one dollar and get nine dollars back is a great return on the use of state funds in general and in this case the funds go to provide much needed medical care for our most vulnerable Arizonans. As these numbers show, prior quarter coverage is truly a win-win situation. **II. AHCCCS' Request for a Waiver under 42 U.S.C. § 1315 Must Promote the Objectives of the Medicaid Act and Test Experimental Goals** AHCCCS predicates its proposed rulemaking on the waiver request it submitted to the federal government that it be allowed to not provide prior quarter coverage. A waiver request must meet very specific criteria. The Social Security Act grants the Secretary of the United States Department of Health and Human Services limited authority to waive the requirements of the Medicaid Act. The Social Security Act allows the Secretary grant a "[w]aiver of State plan requirements" in 42 U.S.C. § 1396a in the case of an "experimental, pilot, or demonstration project." 42 U.S.C. § 1315(a) ("section 1315"). The Secretary may only approve a project which is "likely to assist in promoting the objectives" of the Title XIX and may only "waive compliance with any of the requirements [of the act] ... to the extent and for the period necessary" for the state to carry out the project. *Id*. AHCCCS' waiver amendment requests would impede rather than promote the objectives of the Medicaid program by creating unnecessary barriers to enrollment and access to care. Legislative history confirms that Congress meant for section 1315 projects to test experimental ideas. According to Congress, section 1315 was intended to allow only for "experimental projects designed to test out new ideas and ways of dealing with the problems of public welfare recipients" that are "to be selectively approved," "designed to improve the techniques of administering assistance and related rehabilitative services," and "usually cannot be statewide in operation." S. Rep. No. 87-1589, at 19-20, *as reprinted in* 1962 U.S.C.C.A.N. 1943, 1961-62, 1962 WL 4692 (1962). *See also* H. R. Rep. No. 3982, pt. 2 at 307-08 (1981) ("States can apply to HHS for a waiver of existing law in order to test a unique approach to the delivery and financing of services to Medicaid beneficiaries."). In addition, the Secretary is bound by the Ninth Circuit's precedent	following this repeal, were funds exclusively available for the prior quarter coverage requirement.

	for any waiver requests under 42 U.S.C. § 1315. The Ninth Circuit described section 1315's application to "experimental; pilot or demonstration" projects as follows: "The statute was not enacted to enable states to save money or to evade federal requirements but to 'test out new ideas and ways of dealing with the problems of public welfare recipients'. [Citation omitted] . . . A simple benefits cut, which might save money, but has no research or experimental goal, would not satisfy this requirement." *Beno v. Shalala*, 30 F.3d 1057, 1069 (9th Cir. 1994). AHCCCS' waiver request must meet these requirements. As explained below, AHCCCS' waiver request fails to establish any demonstration value and instead is a cost saving proposal only. **III. AHCCCS' Waiver Request Serves No Experimental Purpose, Creates Barriers to Health Care and Will Impede, Not Further, the Objectives of the Medicaid Act** The only reason for the proposed rulemaking is AHCCCS' pending waiver request. The waiver request does not serve any valid experimental purpose and, moreover, represents bad policy for low-income Arizonans and working Arizonans with disabilities who need coverage. Such a limit on access to Medicaid only creates a barrier to access to care and does not promote the objectives of the Medicaid Act. Moreover, AHCCCS proposes to limit prior quarter coverage solely to save money. AHCCCS concedes this is solely a request to save money. As explained above, a proposal to save money, is not a valid reason for a Section 1315 waiver. *See Beno*, 30 F.3d at 1069. The waiver request has no evidentiary or experimental basis and will impede not further access to care and the objectives of the Medicaid Act. Therefore, the proposed rulemaking based on the flawed waiver request should not be approved. **Conclusion** For all the above reasons, the proposed rulemaking should not be approved. Thank you for the opportunity to comment on the proposed rulemaking. If you have any questions concerning this letter, please contact Ellen Katz at (602) 252-3432 or at eskatz@qwestoffice.net or Rose Daly-Rooney at 520-327-9547, ext. 323.	
Jennifer A. Carusetta 03/16/18 Executive Director, Health System Alliance of Arizona	The purpose of this letter is to provide comment on the Notice of Proposed Rule-Making: Prior Quarter Coverage. As stated in previous correspondence on the proposed Waiver Amendment, prior quarter coverage has proven to be a critical source of reimbursement for hospital systems, who are required to provide care to patients in emergencies, regardless of whether they have healthcare coverage or not. Despite the decreasing rate of uninsured in our communities, we still see uninsured in our emergency departments. Prior quarter coverage, which provides reimbursement for medical bills incurred during months of eligibility in the quarter prior to AHCCCS enrollment, provides a critical	AHCCCS thanks Ms. Carusetta for her comments. The waiver amendment is intended to promote the objectives of Title XIX by encouraging beneficiaries to obtain and maintain health coverage, even when healthy. The Administration

	opportunity for hospitals to obtain reimbursement for what would otherwise be uncompensated care. As noted previously, behavior between the Medicaid and commercially insured populations does tend to be aligned in most instances. However, one critical difference is that we do tend to see more "churn" in coverage in the Medicaid population, who are more frequently engaged in part-time and seasonal employment, than in the commercially insured population. For this reason, coverage for individuals in the Medicaid population will be more inconsistent than it is for those in the commercial market. Prior quarter coverage provides an important "stopgap" in coverage for those Medicaid enrollees who may move in and out of employment throughout the year. The availability of prior quarter coverage assures that eligible expenses incurred during a period of employment when a person may not have access to healthcare coverage will be covered and will not become an incurred medical debt or uncompensated cost to our healthcare delivery system. Finally, when commenting on the Proposed Waiver Amendment, we made the request that fiscal analysis be conducted on the impact of eliminating prior quarter coverage on our hospital systems in Arizona. While we understand that an analysis was conducted on the impact of this repeal on the entire healthcare industry, this analysis was not specific to hospital systems, who as the safety net providers charged with providing emergency care for the uninsured regardless of coverage, will bear the majority of this impact. We find it concerning that this rule is being promulgated absent a full understanding of what economic impact this policy change will have on this critical network of care. I sincerely appreciate your consideration and am happy to answer any questions or provide additional information.	believes this will improve continuity of care by reducing gaps in coverage when beneficiaries previously would transition often on and off Medicaid or sign up for Medicaid only when sick. Specifically, for those who are aged, blind or disabled, or who may need long-term services and supports through Medicaid, this waiver will encourage beneficiaries to apply for Medicaid when they believe they meet the criteria for eligibility to ensure primary or secondary coverage through Medicaid to receive these services when the need arises. Those beneficiaries who obtain coverage, either through Medicaid or commercial insurance, will then have existing resources available to pay for the medical services they receive, whether emergent or non-emergent.
Jason Barraza 10/29/18 Senior Associate Director – Veridus LLC; On behalf of N.J. Ebten, CEO – Palo Verde Behavioral Health, Randy Rios, CEO – Valley Hospital	As healthcare leaders representing three Arizona behavioral Health hospitals, we are writing to express our concern regarding AHCCCS's request to waive prior quarter coverage of Medicaid for those patients in need of inpatient psychiatric treatment. The current proposal provides retroactive coverage back to the beginning of the month in which the application was filed. This change will create significant gaps in AHCCCS enrollees' coverage. This proposal will have a unique impact on enrollees' needing inpatient psychiatric treatment. Patients admitted to a behavioral health hospital are typically suicidal, homicidal or experiencing severe psychiatric symptoms which include hallucinations, delusions or paranoia. These patients may not have had Medicaid coverage, or they may be unaware that their coverage has lapsed. Our business office meets with all uninsured patients within 24 hours of admission. At that time, we assist the patient with submitting their Medicaid application. However, due to the severity of their illness	AHCCCS thanks Mr. Barraza for his comments and those of his clients. The waiver amendment is intended to promote the objectives of Title XIX by encouraging beneficiaries to obtain and maintain health coverage, even when healthy. The Administration believes this will improve continuity of care by reducing gaps in coverage when beneficiaries

Mental Health and Chemical Dependency Care, and David Carnahan, CEO – Quail Run Behavioral Health	there are many instances whereby patients may be uncooperative or unable to provide the necessary information. However, in several days with treatment, their symptoms typically improve to a point whereby they are able to assist us in submitting their application. If the proposed waiver is granted there will be patients admitted at the end of one month but unable to assist us in submitting an application until on or after the first day of the next month. This circumstance will undoubtedly leave AHCCCS enrollees uninsured for a portion of their stay for which they would be legally responsible. While I believe this was not the intended outcome, this is obviously unfair to AHCCCS enrollees as well as this hospital. I respectfully request that you consider an alternative waiver plan. This plan would permit clients in need of psychiatric inpatient hospitalization a retroactive period of 30 days from the date the application was filed. I believe that this change would allow your members and our hospital the necessary time to gather the information needed to submit a Medicaid application. I believe that this alternative waiver plan will improve your members adherence to the objectives of the Medicaid program by (1) encouraging them to obtain and maintain health coverage, even when healthy; (2) encouraging them to apply for Medicaid without delay, to promote continuity of eligibility and enrollment for improved health status; and (3) containing Medicaid costs. I also believe that our proposal will continue to support your goal of sustainability of the Medicaid program and focus resources on providing accessible and high-quality health care while still limiting the resource-intensive process associated with prior quarter coverage eligibility.	previously would transition often on and off Medicaid or sign up for Medicaid only when sick. While the language of the rule is the same as that in the CMS waiver request, AHCCCS is in continued conversation with these providers to determine a path forward that is best for all parties, with the health of AHCCCS Members as a priority for the Administration.

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 have been prescribed.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

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:

The rules were updated to align with CMS's requirement that AHCCCS implement prior quarter coverage eligibility rules found at 42 CFR 435.915. This regulation requires the Administration to provide Prior Quarter (PQ) eligibility. However, the Administration is submitting a new waiver amendment whereby AHCCCS would be exempted from the prior quarter coverage eligibility requirement similar to the waivers recently

approved by CMS for other States and similar to the waiver previously approved for Arizona. This rulemaking will proceed only if the waiver amendment is approved by CMS.

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:

No material is incorporated by reference.

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:

The rule was not made, amended or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

ARTICLE 3. GENERAL ELIGIBILITY REQUIREMENTS

Section

ARTICLE 3. GENERAL ELIGIBILITY REQUIREMENTS

R9-22-303. ~~Prior Quarter Eligibility~~ Repealed

A. ~~Prior Quarter eligibility shall be effective no earlier than January 1, 2014. An applicant may be eligible during any of the three months prior to application if the applicant:~~Subject to CMS approval, prior quarter coverage eligibility shall be limited to applicants who meet the requirements in B and who also:

1. ~~Received one or more covered services described in 9 A.A.C. 22, Article 2 and Article 12, and 9 A.A.C. 28, Article 2 during the month~~Are eligible during any of the three months prior to application; and
2. ~~Would have qualified for Medicaid at the time services were received if the person had applied regardless of whether the person is alive when the application is made.~~Received one or more covered services described in 9A.A.C. 22, Article 2 and Article 12, and 9 A.A.C. 28, Article 2 during the month; and
3. Would have qualified for Medicaid at the time services were received if the person had applied regardless of whether the person is alive when the application is made.

B. ~~The Prior Quarter requirements do not apply to~~Prior quarter coverage eligibility is limited to applicants who are:

1. ~~Qualified Medicare Beneficiaries~~Under the age of 19, or
2. ~~KidsCare~~Pregnant, or
3. In the 60 day post-partum period beginning with the last day of the pregnancy.