

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

ADMINISTRATION

PREAMBLE

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

R9-28-702

Rulemaking Action:

Amend

2. Citations to the agency’s statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. §§ 36-2903.01, 36-2903, 36-2932

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

3. The effective date of the rule:

As specified in A.R.S. § 41-1032(A)(4), the agency requests an immediate effective date to provide a benefit to the public and a penalty is not associated with a violation of the rule.

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: 28 A.A.R. 1205, June 3, 2022.

Notice of Proposed Rulemaking: 28 A.A.R. 1234, June 3, 2022.

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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

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

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public

may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

A study was not referenced or relied upon when revising these regulations.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

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

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

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 rulemakings.

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

Name and Position of Commenter	Date of Comment	Text of Comment	AHCCCS Response
Brett P. Robertson, CEO, Haven	6/10/2022	I write today to express my support of the proposed rulemaking amendment to the long-term care provider assessment. As	AHCCCS thanks Haven Health Group for their

Health Group		<p>you know, the last two years have been unbelievably difficult for skilled nursing facilities, we have faced long odds to keep our patients safe and our staff happy. Each and every day brings a new challenge to our business, and this proposed amendment to the provider assessment gives us much needed financial backing to continue to recruit care givers back to our sector, as well as prevent them from leaving. Each day we see employees leave the skilled nursing work force due to the strenuous nature of the job and having the ability to reward key employees with additional dollars will make a huge difference. As the largest rural nursing home operator in the state, we see first-hand, every day, just how much more expensive life is for our staff as well as for our business. The cost of food, medication, medical supplies, and labor have skyrocketed over the last two years. These increases, coupled with a decrease in occupancy make any additional dollars available to us more meaningful than during ordinary times. Please know that Haven Health Group and its 18 skilled nursing facilities and three assisted living facilities unequivocally support the provider tax amendment and know that it will have a direct impact on the viability of the nursing home network in Arizona.</p>	support of this rulemaking.
Mason A. Hunter, President, Haven Health Group	6/13/2022	<p>I am writing regarding the proposed rulemaking amendment to the long-term provider assessment. Throughout the last two years we have experienced the hardest operational and clinical challenges we have ever seen. Every one of our 18 facilities are facing significant challenges that require every resource possible to overcome. We have seen the cost of labor, medical supplies, medicine, food, uniforms, linens, and all other items necessary for skilled nursing care balloon significantly over the past two years. In</p>	AHCCCS thanks Health Group Management for their support of this rulemaking.

		<p>addition to these rising costs, our staff have personally been negatively impacted by the rapid rise of inflation and cost of goods.</p> <p>As a result of the pandemic, we have also seen our occupancy decrease, which makes these additional dollars even that much more helpful. We are truly caring for Arizona’s most vulnerable population, with limited resources. These dollars make a big impact in our ability to seek and retain quality staff, purchase needed supplies and ultimately give the care our residents deserve. These dollars have a direct impact on the lives of Arizona’s elderly.</p>	
<p>Heather Friebus, Administrator Devon Gables/AHCA Board President</p>	<p>7/5/2022</p>	<p>Thank you for the opportunity to comment on the AHCCCS Notice of Proposed Rulemaking amending the long term care provider assessment. As President of Arizona Health Care Association (AHCA) and Administrator of Devon Gables Rehabilitation this is very important to the bottom line for Devon Gables and many of our members. AHCA and Devon Gables Rehabilitation Center completely and unequivocally support the proposed rule and encourage its implementation.</p> <p>The COVID-19 pandemic and subsequent inflationary price increases have placed major pressures on Devon Gables Rehabilitation Center. Nurses and care givers are demanding increased salaries, and cost of goods has risen to the highest I have ever seen in the last 15 years as Administrator here at Devon Gables. This proposed rule increases the assessed dollars to facilities like Devon Gables and provides additional revenue to the long term care community with over \$29 million of much needed funding. This funding is provider driven and does not impact the state of Arizona. Devon Gables serves of 150 AHCCCS members and without this funding we would not survive</p>	<p>AHCCCS thanks Devon Gables for their support of this rulemaking.</p>

		<p>financially. I have worked at Devon Gables for over 30 years and they are my second family, I pride myself on having low turnover and thus keeping my residents happy in their home here at the facility. I have had to offer housing in my Independent living apartments to some of my Certified Nursing assistants who have lost their homes. This is a devastating state of affairs for so many and I appreciate the opportunity to share my experience and how meaningful the Long Term Care Provider Assessment is for not only Devon Gables, but many of the AHCA members who serve our very vulnerable population.</p>	
<p>David A. Voepel, CEO, AHCA</p>	<p>6/10/2022</p>	<p>Thank you for the opportunity to comment on the Arizona Health Care Cost Containment System (AHCCCS) Notice of Proposed Rulemaking amending the long term care provider assessment. The Arizona Health Care Association (AHCA) is the largest statewide non-profit association representing skilled nursing facilities and assisted living communities with over 180 members. AHCA completely and unequivocally supports this proposed rule and encourages its implementation. The COVID-19 pandemic and subsequent inflationary price increases have placed major pressures on skilled nursing facilities in Arizona. This proposed rule increases the assessed dollars to facilities and provides additional revenue to the long term care community with over \$29 million of much needed funding. This funding is provider driven and does not impact the state of Arizona. Without these additional dollars and the continued support of AHCCCS, long term care services and supports would face continued peril putting at risk the network available for our most frail and vulnerable.</p>	<p>Thank you for your public comments regarding the Long Term Care Assessment expedited rulemaking. The Association's support of AHCCCS changes is appreciated.</p>

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:

Not applicable.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Not applicable.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

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

None.

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

Not applicable.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

ARIZONA LONG-TERM CARE SYSTEM

ARTICLE 7. STANDARDS FOR PAYMENTS

Section

R9-28-702 Nursing Facility Assessment

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-28-702. Nursing Facility Assessment

- A.** For purposes of R9-28-702 and R9-28-703, in addition to the definitions under A.R.S. § 36-2999.51, the following terms have the following meaning unless the context specifically requires another meaning:

“820 transaction” means the standard health care premium payments transaction required by 45 CFR 162.1702.

“Assessment year” means the 12 month period beginning October 1st each year

“Medicaid patient days” means patient days reported on the Nursing Care Institution Uniform Accounting Report (UAR) as attributable to AHCCCS and its contractors as the primary payor.

“Medicare days” means resident days where the Medicare program, a Medicare advantage or special needs plan, or the Medicare hospice program is the primary payor.

“Medicare patient days” means patient days reported on the Nursing Care Institution UAR as Skilled Medicare Patient Days or Part C/Advantage/Medicare Replacement Days.

“Nursing Care Institution UAR” means the Nursing Care Institution Uniform Accounting Report described by R911-204.

- B.** Subject to Centers for Medicare and Medicaid Services (CMS) approval, effective October 1, 2012, nursing facilities shall be subject to a provider assessment payable on a quarterly basis.

C. All nursing facilities licensed in the state of Arizona shall be subject to the provider assessment except for:

1. A continuing care retirement community,
2. A facility with 58 or fewer beds, according to the Arizona Department of Health Services, Division of Licensing Services, Provider & Facility Database,
3. A facility designated by the Arizona Department of Health Services as an Intermediate Care Facility for the Intellectually Disabled,
4. A tribally owned or operated facility located on a reservation, ~~or~~
5. Arizona Veteran's Homes, or
6. Facilities located outside of the State of Arizona

D. The Administration shall calculate the prospective nursing facility provider assessment for qualifying nursing facilities as follows:

1. In September of each year, the Administration shall obtain from the Arizona Department of Health Services the most recently published Nursing Care Institution UAR and the information required in subsection (C)(2). At the request of the Administration, a nursing facility shall provide the Administration with any additional information necessary to determine the assessment.
2. The Administration shall use the information obtained under subsection (D)(1) to determine:
 - a. Each nursing facility's total annual Medicaid patient days,
 - b. Each nursing facility's total annual Medicare patient days,
 - c. Each nursing facility's total annual patient days,
 - d. The aggregate net patient service revenue of all assessed providers, and

- e. The slope described under 42 CFR 433.68(e)(2).
3. For each nursing facility, other than a nursing facility exempted in subsection (C) or described in subsection (D)(4), the provider assessment is calculated by multiplying the nursing facility's total annual patient days, other than Medicare patient days, by ~~\$15.63~~20.80.
 4. For a nursing facility, other than a nursing facility exempted in subsection (C), with the number of total annual Medicaid patient days greater than or equal to the number required to achieve a slope of at least 1 applying the uniformity tax waiver test described in 42 CFR 433.68(e)(2), the provider assessment is calculated by multiplying the nursing facility's total annual patient days, other than Medicare patient days, by ~~\$1.80~~2.40.
 5. For each assessment year the slope described under 42 CFR 433.68(e)(2) shall be recalculated.
 6. The assessment calculated under subsections (D)(3), (D)(4) and (D)(5), shall not exceed 3.5 percent of the aggregate net patient service revenue of all assessed providers as reported on the Nursing Care Institution UAR obtained under subsection (D)(1). If the rates listed in (D)(3) and (D)(4) produce a total annual assessment that exceeds 3.5 percent of the aggregate net patient service revenue of all assessed providers as reported on the Nursing Care Institution UAR obtained under subsection (D)(1), the rates listed in (D)(3) and (D)(4) will be reduced to not exceed the 3.5 percent limit.
 7. All calculations and determinations necessary for the provider assessment shall be based on information possessed by the Administration on or before November 1

of the assessment year.

8. The Administration will forward the provider assessment by facility to the Arizona Department of Revenue on or before December 1 of the assessment year.
9. In the event a nursing facility closes during the assessment year, the nursing facility shall cease to be responsible for the portion of the assessment applied to the dates the nursing facility is not operating.
10. In the event a nursing facility begins operation during the assessment year, that facility will have no responsibility for the assessment until such time as the facility has submitted to the Arizona Department of Health Services the report required by R9-11-204(A) covering a full year of operation.
11. In the event a nursing facility has a change of ownership such that the facility remains open and the ownership of the facility changes, the assessment liability transfers with the change in ownership.