

NOTICE OF EXEMPT RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

ARIZONA LONG-TERM CARE SYSTEM

PREAMBLE

1. Sections Affected

R9-28-204

R9-28-205

Rulemaking Action

Amend

Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. §36-2903.01

Implementing statute: A.R.S. § 36-2907, amended by Section 13 of Laws 2011, Chapter 31 (“the 2011 Act”)

3. The proposed effective date of the rules:

October 1, 2011

4. A list of all previous notices appearing in the *Register* addressing the proposed exempt rule:

None

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Mariaelena Ugarte
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6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from regular rulemaking procedures:

The Governor's Medicaid Reform Plan, as announced on March 15, 2011, includes proposals to reduce nonfederal expenditures for the AHCCCS program by approximately \$500 million during state fiscal year 2012. To achieve some of these reductions, the AHCCCS Administration is promulgating limitations to respite services.

At this time, the AHCCCS Administration is promulgating an approximate 15 percent reduction in the annual limit for respite hours. Respite services are provided to members receiving Behavioral Health services in an Acute care setting and to members in the ALTCS program. The respites services are not delineated under the state plan, however, they are a covered service under the 1115 Waiver.

In Arizona Laws 2011, Chapter 31, Section 13., the Legislature authorized the agency to adopt rules under A.R.S. § 36-2907(D), including rules to limit, to the extent possible, the scope, duration and amount of services, including maximum limitation for inpatient services.

Arizona Laws 2011, Chapter 31, Section 34 authorizes the Administration to adopt rules necessary to implement the AHCCCS program within the available appropriations and exempts the Administration from the formal rulemaking requirements of A.R.S. Title 41, Chapter 6.

Arizona Law 2011, Chapter 31, Section 34, requires public notice with an opportunity for public comment of at least 30 days. Public notice of this rule making was accomplished

through publication of this rulemaking on the agency web site on July 21, 2011. A supplemental notice also appeared in the Arizona Administrative Register in advance of the close of the comment period. In addition, notice was directed to those individuals who, prior to this proposed rule making have notified the agency of their desire to receive such notices directly under A.R.S. 36-2903.01(B)(6).

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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:

No studies were relied upon for the implementation of this rulemaking, but analysis of the member utilization of respite services reported through claims and encounters for dates of service during SFY 2010, has assisted the AHCCCS Administration in arriving at the limitations. Prior to promulgating this rule, AHCCCS reviewed historical information regarding utilization of the services limited by the rule. Based on that review, AHCCCS determined that at least 75 percent of utilizing members would remain unaffected if these limitations are implemented.

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

Not applicable.

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

AHCCCS estimates that the limitations on respite hours will reduce total expenditures by approximately \$5.2 million in combined state and federal funds for the state fiscal year 2012.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Not applicable.

11. A summary of the comments made regarding the rule and the agency response to them:

The following public comments were received by the close of the comment period, 5pm on August 21, 2011:

The Arizona Legislature has directed the AHCCCS Administration to establish a program within legislative appropriation. Due to the State’s severe budget crisis, the Legislature has not appropriated sufficient funds to maintain the benefit at the current level. Reducing respite hours involves difficult decisions which the Administration realizes will have significant impacts on the lives of some Arizona residents. The reduction of respite hours is one of several steps the Administration must take to provide benefits within appropriated funds. The AHCCCS Administration has previously limited or eliminated optional services and continues to explore other service limitations. In addition, the AHCCCS Administration has previously reduced provider rates, and made changes to eligibility.

<u>Numb:</u>	<u>Date/ Commenter:</u>	<u>Comment:</u>	<u>Response:</u>
1.	07/23/11 Pam Rowe Director Caring Connections	If respite care is to be very nimal or nonexistant I believe that the state had best be prepared to open and staff (big money) more children home type facilities. Along with that our juvenile system is going to grow majorly. People are going to think twice before becoming foster parents. Would we be better off with respite support systems now or juvenile halls being at capacity?	The AHCCCS Administration initially proposed a reduction to 360 hours of respite care. After considering the public’s input the Administration implemented a much more limited reduction to 600 hours of respite care per

			<p>year. The Administration understands that a reduction in services may be challenging, but we believe that 600 hours per year – 50 hours per month – will allow for families to receive needed respite.</p>
2.	<p>07/24/11 Jessica Nelson Caregiver Caring Connections</p>	<p>I believe if the respite hours a year is cut in half it will not only hurt the kids but thier families also. By thier parents not being able to work as much as they are now which will impact thier lives financially. It will also effect alot of providers as well by even putting them out of jobs. We can still work with the kids if the respite hours are just cut down to 600 a year.</p>	<p>See above response.</p>
3.	<p>07/24/11 Shellie Echternach Direct Care Provider Caring</p>	<p>I feel that these services are absolutly necessary to the families we provide them to. most of the kids i work with are in foster care. they need to use the respite programs for many reasons. the main thing i see is these kids come from pretty tuff situations when they are placed in foster care so act out because they don't know what else to do. the need a break from worrying about whats going on in the home. the foster parents need a break from the</p>	<p>See above response.</p>

	Connections	behaviors. the families we provide respite services that are not foster families, are usually at the point were if the child does not get this break something bad is gonna happen. with out the respite house many of these children are gonna end up in the juvenile detention center, gangs or something. please do not cut the funding to our program.	
4.	08/09/11 Joyce Hoie Director Raising Special Kids	<p>In keeping with a family-centered approach to services, it would be helpful to avoid a situation where respite services alone are being changed or considered outside of the ISP process, and without the context of planning and coordinating the full range of needed services for the child.</p> <p>Although the plan year, starting October 1st, offers a precise date for administrative implementation, it may pose significant problems for large numbers of families and Support Coordinators to thoughtfully plan and prepare for a respite reduction within a short period of time. By using the ISP year, rather than the plan year, it maintains respite services within the complement of other service arrangements and offers a more efficient and family-friendly implementation. In a planned service reduction that is likely to be somewhat complex and difficult for both families and service providers, it is suggested that AHCCCS consider this as a necessary and prudent accommodation.</p>	Although an ISP year was considered, DES Division of Developmental Disabilities supported the respite change with the benefit year of 10/01 through 09/30 timeframe.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

13. Incorporations by reference and their location in the rules:

None.

14. Was this rule previously made as an emergency rule? If so, please indicate the *Register* citation:

No.

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

Section:

R9-28-204. Institutional Services

R9-28-205. Home and Community Based Services (HCBS)

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

ARIZONA LONG-TERM CARE SYSTEM

R9-28-204. Institutional Services

A. Institutional services are provided in:

1. A NF;
2. An ICF-MR; or
3. A facility identified in R9-28-1105(A)(1)(b), (B), or (C).

B. The Administration and a contractor shall include the following services in the per diem rate for a facility listed in subsection (A):

1. Nursing care services;
2. Rehabilitative services prescribed as a maintenance regimen;
3. Restorative services, such as range of motion;
4. Social services;
5. Nutritional and dietary services;
6. Recreational therapies and activities;
7. Medical supplies and non-customized durable medical equipment under 9 A.A.C. 22, Article 2;
8. Overall management and evaluation of a member's care plan;
9. Observation and assessment of a member's changing condition;
10. Room and board services, including supporting services such as food and food preparation, personal laundry, and housekeeping;
11. Non-prescription and stock pharmaceuticals; and
- ~~12. Respite care services not to exceed 30 days per contract year.~~
12. Respite care services not to exceed 600 hours per benefit year.

C. Each facility listed in subsection (A) is responsible for coordinating the delivery of at least the following auxiliary services:

1. Under 9 A.A.C. 22, Article 2:
 - a. Attending physician, practitioner, and primary care provider services;
 - b. Pharmaceutical services;
 - c. Diagnostic services under A.A.C. R9-22-208;
 - d. Emergency medical services; and
 - e. Emergency and medically necessary transportation services.
2. Therapy services under R9-28-206.

D. Limitations. The following limitations apply:

1. A private room in a NF, ICF-MR, or facility identified in R9-28-1105(A)(1)(b), (B), or (C) is covered only if:
 - a. The member or has a medical condition that requires isolation, and
 - b. The member's primary care provider or attending physician provides written authorization;
2. Each ICF-MR shall meet the standards in A.R.S. § 36-2939(B)(1), and in 42 CFR 483, Subpart I, February 28, 1992, incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments;
3. Bed hold days as authorized by the Administration or its designee for a fee-for-service provider shall meet the following criteria:
 - a. Short-term hospitalization leave for a member age 21 and over is limited to 12 days per AHCCCS ~~contract year~~ benefit year, and is available if a member is admitted to a hospital for a short stay. After the short-term hospitalization, the member is returned to the institutional facility from which leave is taken, and to the same bed if the level of care required can be provided in that bed; and
 - b. Therapeutic leave for a member age 21 and older is limited to nine days per AHCCCS ~~contract year~~ benefit year. A physician order is required for therapeutic leave from the facility for one or more overnight stays to enhance psycho-social interaction, or as a trial basis for discharge planning. After the therapeutic leave, the member is returned to the same bed within the institutional facility;

- c. Therapeutic leave and short-term hospitalization leave are limited to any combination of 21 days per ~~contract year~~ benefit year for a member under age 21;
4. The Administration or a contractor shall cover services that are not part of a per diem rate but are ALTCS covered services included in this Article, and deemed necessary by a member's case manager or the case manager's designee if:
 - a. The services are ordered by the member's primary care provider; and
 - b. The services are specified in a case management plan under R9-28-510;
5. A member age 21 through 64 is eligible for behavioral health services provided in a facility under subsection (A)(3) that has more than 16 beds, for up to 30 days per admission and no more than 60 days per ~~contract year~~ benefit year as allowed under the Administration's Section 1115 Waiver with CMS and except as specified by 42 CFR 441.151, May 22, 2001, incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments; and
6. The limitations in subsection (D)(5) do not apply to a member:
 - a. Under age 21 or age 65 or over, or
 - b. In a facility with 16 beds or less.

R9-28-205. Home and Community Based Services (HCBS)

- A.** Subject to the availability of federal funds, HCBS are covered services if provided to a member residing in the member's own home or an alternative residential setting. Room and board services are not covered in a HCBS setting.
- B.** The case manager shall authorize and specify in a case management plan any additions, deletions, or changes in home and community based services provided to a member or in accordance with R9-28-510.
- C.** Home and community based services include the following:
 1. Home health services provided on a part-time or intermittent basis. These services include:
 - a. Nursing care;
 - b. Home health aide;

- c. Medical supplies, equipment, and appliances;
 - d. Physical therapy;
 - e. Occupational therapy;
 - f. Respiratory therapy; and
 - g. Speech and audiology services;
2. Private duty nursing services;
 3. Medical supplies and durable medical equipment, including customized DME, as described in 9 A.A.C. 22, Article 2;
 4. Transportation services to obtain covered medically necessary services;
 5. Adult day health services provided to a member in an adult day health care facility licensed under 9 A.A.C. 10, Article 5, including:
 - a. Supervision of activities specified in the member's care plan;
 - b. Personal care;
 - c. Personal living skills training;
 - d. Meals and health monitoring;
 - e. Preventive, therapeutic, and restorative health related services; and
 - f. Behavioral health services, provided either directly or through referral, if medically necessary;
 6. Personal care services;
 7. Homemaker services;
 8. Home delivered meals, that provide at least one-third of the recommended dietary allowance, for a member who does not have a developmental disability under A.R.S. § 36-551;
 - ~~9. Respite care services for no more than 720 hours per contract year;~~
 9. Respite care services for no more than 600 hours per benefit year;
10. Habilitation services including:
 - a. Physical therapy;
 - b. Occupational therapy;
 - c. Speech and audiology services;

- d. Training in independent living;
 - e. Special development skills that are unique to the member;
 - f. Sensory-motor development;
 - g. Behavior intervention; and
 - h. Orientation and mobility training;
11. Developmentally disabled day care provided in a group setting during a portion of a 24-hour period, including:
- a. Supervision of activities specified in the member's care plan;
 - b. Personal care;
 - c. Activities of daily living skills training; and
 - d. Habilitation services; and
12. Supported employment services provided to a member in the ALTCS transitional program under R9-28-306 who is developmentally disabled under A.R.S. § 36-551.