

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

ARIZONA LONG-TERM CARE SYSTEM

PREAMBLE

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|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| R9-28-508 | New Section |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
- Authorizing statute: A.R.S. § 36-2951
Implementing statute: A.R.S. § 36-2951
- 3. The effective date of the rules:**
- This rulemaking will be effective 60 days from the date of filing with the Secretary of State.
- 4. A list of all previous notices appearing in the Register addressing the final rules:**
- Notice of Rulemaking Docket Opening: 16 A.A.R. 1176, July 2, 2010
Notice of Proposed Rulemaking: 16 A.A.R. 1126, July 2, 2010
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- Name: Mariaelena Ugarte
Address: AHCCCS
Office of Administrative Legal Services
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Telephone: (602) 417-4693
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- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
- The legislature created A.R.S. § 36-2951 in 2008 to provide requirements for self-directed attendant care (SDAC) services. The Administration is proposing rule language to describe the requirements a person must follow in order to provide or receive SDAC services.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule 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:**
- No study was reviewed during this rulemaking and the Agency does not anticipate reviewing any studies.

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:

The Administration anticipates a minimal economic impact on the implementing agency, small businesses and consumers. Other attendant care options are available to the member in addition to the Self-Directed Attendant Care services described in the proposed rule.

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

No additional changes have been made between the proposed rules and the final rules below. The Administration made the rules more clear, concise, and understandable by making grammatical, verb tense, punctuation, and structural changes throughout the rules.

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

The Administration received one written comment from the Health and Safety Institute's Mary Schombert suggesting that the Administration add language requiring: SDAC personnel to be certified in first aid, CPR and universal precautions by a nationally recognized organization that requires hands-on evaluation of skills by an authorized instructor, rather than web-based training.

The Administration's response is: the training requirements are described in AHCCCS' policy manual and address this suggestion. The policy manual clarifies that training requires certification by a nationally recognized organization using in-person training, not web based training. This policy is communicated to SDAC personnel and the public via the AHCCCS internet site at:

<http://www.azahcccs.gov/commercial/default.aspx>

At the GRRC hearing on November 16, 2010, it was agreed to place the training requirements in rule R9-28-508 (C).

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

A.R.S. § 36-2951(B) required the Administration to submit the proposed rules to the state board of nursing for its review and approval. The State Board of Nursing heard and approved the proposed rules on November 20, 2008.

The rules were presented to the Board of Nursing again on July 22, 2010, it was agreed that the approval of the rules remained valid.

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

Not applicable

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

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ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

Section

R9-28-508. ~~Repealed~~ Self-Directed Attendant Care (SDAC)

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

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ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

R9-28-508. ~~Repealed~~ Self-Directed Attendant Care (SDAC)

A. For purposes of this Article the following terms are defined:

“Competent member” means a person who is oriented, exhibits evidence of logical thought, and can provide directions.

“Fiscal and Employer Agent” or “FEA” is a company specified by the program contractor or the Administration in contract to serve as an employment/payroll processing center for attendant care workers employed by the member to provide SDAC services.

“Medically stable” means the member’s skilled-care medical needs are routine and not subject to frequent change because of health issues.

“Personal care” means activities of daily life such as dressing, bathing, eating and mobility.

B. In lieu of receiving other attendant care services a competent member who meets the requirements of A.R.S. § 36-2951 or the member’s legal guardian may choose to employ through the FEA a person to provide Self-Directed Attendant Care (SDAC) services. A paid caregiver described under R9-28-506 and a parent of a minor child shall not receive reimbursement for SDAC services.

C. The attendant care worker chosen to provide SDAC services does not need to be a registered provider. The attendant care worker shall have, at a minimum, hands on training in First Aid, CPR, Universal Precautions, and state and federal laws regarding privacy of health information or training of similar efficacy as approved by the Administration.

D. The Administration or Program Contractor shall cover SDAC services only if the member resides in the member’s home, and shall not cover SDAC services if the member is institutionalized or residing in an alternative residential setting. If the member has a legal guardian, the legal guardian shall be present when SDAC services are provided.

- E.** A member who chooses to receive SDAC services is not precluded from receiving medically necessary, cost-effective home health services from other agencies or providers if the services provided are not duplicative of the specific attendant care or skilled service already received through the program contractor.
- F.** A competent member or legal guardian may employ an SDAC attendant care worker to provide personal care, homemaker and general supervision services.
- G.** A competent member, who is medically stable, or the member's legal guardian may employ an attendant care worker to also provide the following skilled services:
1. Bowel care, including suppositories, enemas, manual evacuation, and digital stimulation;
 2. Bladder catheterizations (non-indwelling) that do not require a sterile procedure;
 3. Wound care (non-sterile);
 4. Glucose monitoring;
 5. Glucagon as directed by the health care provider;
 6. Insulin by subcutaneous injection only if the member is not able to self-inject and the attendant care worker uses a sliding scale dosing for insulin;
 7. Permanent gastrostomy tube feeding; and
 8. Additional services requested in writing with the approval of the Director and the Arizona State Board of Nursing.
- H.** The Administration or program contractor shall not cover services under this Section unless:
1. For each SDAC attendant care worker employed by a member or legal guardian, a registered nurse licensed under A.R.S. Title 32, Chapter 15 visits the member and SDAC attendant care worker before a skilled service is provided. The registered nurse will assess, educate, and train the member and SDAC attendant care worker regarding the specific skilled service that the member requires; and
 2. The registered nurse determines in writing that the attendant care worker understands how and demonstrates the skill to perform the processes or procedures required to provide the specific skilled service.