

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM – ADMINISTRATION

PREAMBLE

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

R9-22-718

Amend

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

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

Implementing statutes: A.R.S. § 36-2905.01

**3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**

NOTICE OF DOCKET OPENING: [To be put in by Secretary of State's Staff]

**4. 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

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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

The proposed rulemaking will amend and clarify rules to provide a wider breadth of providers who may be reimbursed under the Urban Hospital Inpatient Reimbursement Program. In particular, this rulemaking is requested to allow AHCCCS to remove the exceptions for Tribal Regional Behavioral Health Authorities (TRBHA's) and the Arizona Department of Health Services, Division of Behavioral Health Services (ADHS/BHS), currently interpreted as extending to Regional Behavioral Health Authorities (RBHA's) as well because RBHA's were subcontractors of ADHS/DBHS at the time the rule was last amended. Since the transfer of ADHS/DBHS duties and responsibilities to AHCCCS (Arizona Laws 2015, Chapter 195), RBHA's and

TRBHA's contract directly with AHCCCS, and therefore, the provisions of the rule will be revised to include them in the definition of contractor for purposes of the Urban Hospital Reimbursement Program. In addition, the requirement for the Contractor to be an Urban Contractor no longer achieves the objectives AHCCCS intended. Instead, AHCCCS intends to encourage contracting between providers and all contractors to best serve AHCCCS members who require inpatient stays, regardless of whether the Contractor is urban or rural. Therefore the Urban Contractor requirement will also be removed from the rule. Also, the rule will explicitly authorize inpatient psychiatric hospitals to be included in the Urban Hospital Reimbursement Program subject to the 95% discount.

The amended rule will encourage competition among hospitals and Contractors, expand provider networks, promote administrative efficiencies, and authorize AHCCCS to more efficiently and effectively reimburse hospitals for inpatient stays. Current federal and state statutory provisions do not prohibit such a change. The proposed rulemaking will also limit AHCCCS Program expenditures to hospitals in this State by extending applicability of the 95% reimbursement to all AHCCCS Contractors responsible for payments to non-contracted urban hospitals. As a result, the rulemaking supports payments to hospitals that are consistent with efficiency, economy, and quality of care, promoting the fiscal health of the State.

**6. 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:**

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

**7. 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.

**8. The preliminary summary of the economic, small business, and consumer impact:**

This rulemaking creates greater opportunities for contracts between contractors and urban hospitals. Based on these changes, the economic impact of this rulemaking will be a savings due to paying 95% of the reimbursement rate for inpatient urban hospitals stays if they are non-contracting hospitals. Since this rulemaking extends the types of hospitals that may be paid 95% when non-contracted, there is a potential savings of over \$2 million less per year, paid in reimbursements to non-contracting hospitals for member inpatient stays. This is because non-contracted inpatient stays were 40% of those stays AHCCCS reimbursed in FY2017. Each 1% discount of the reimbursement value is equal to \$440,830; therefore 5% would equal \$2,204,105. Since the rulemaking may incentivize urban hospitals to contract at a greater rate, exact savings going forward cannot be predicted; however, it is estimated to be over \$2 million less per year.

**9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:**

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

**10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Proposed rule language will be available on the AHCCCS website [www.azahcccs.gov](http://www.azahcccs.gov) the week of January 29, 2018. Please send written or email comments to the above address by the close of the comment period, 5:00 p.m., March 16, 2018.

Date: March 16, 2018  
Time: 2:00 p.m.  
Location: AHCCCS  
701 East Jefferson  
Phoenix, AZ 85034  
Nature: Public Hearing

Date: March 16, 2018  
Time: 2:00 p.m.  
Location: ALTCS: Arizona Long-Term Care System  
1010 N. Finance Center Dr., Suite 201  
Tucson, AZ 85710  
Nature: Public Hearing

Date: March 16, 2018  
Time: 2:00 p.m.  
Location: 2717 N. 4th St. STE 130  
Flagstaff, AZ 86004

Nature: Public Hearing

**11. 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 rule is not more stringent than the federal law, 42 CFR 435.915 because waivers to exempt the Administration from the federal law are allowable, the Administration has held such a waiver before, and the proposed rule would be less stringent than the federal law.

**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.

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

Not applicable.

**13. The full text of the rules follows:**

**TITLE 9. HEALTH SERVICES**

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

**ARTICLE 7. STANDARD FOR PAYMENTS**

Section

R9-22-718. Urban Hospital Inpatient Reimbursement Program

## ARTICLE 7. STANDARD FOR PAYMENTS

### R9-22-718. Urban Hospital Inpatient Reimbursement Program

- A. Definitions. The following definitions apply to this Section:
1. “Noncontracted Hospital” means an urban hospital, including psychiatric hospitals, which does not have a contract under this Section with ~~an urban~~ a contractor ~~in the same county~~.
  2. ~~“Rural Contractor” means a contractor or program contractor as defined in A.R.S. Title 36, Chapter 29 that does not provide services to members residing in either Maricopa or Pima County. “Contractor” has the same meaning as set forth in Arizona Revised Statutes, section 36-2901, and includes all contractors regardless of whether the GSA’s served by the contractor includes urban or rural counties.~~
  3. ~~“Urban Contractor” means a contractor or program contractor as defined in A.R.S. Title 36, Chapter 29, that provides services to members residing in Maricopa or Pima County and may also provide services to members who reside in other counties. An urban contractor does not include ADHS/BHS, or a TRBHA.~~
  4. “Rural Hospital” means a hospital, that is physically located in Arizona but in a county other than Maricopa and Pima County.
  35. “Urban Hospital” means a hospital that is not a rural hospital, as defined in R9-22-712.07, and that is physically located in Maricopa or Pima County.
- B. General Provisions.
1. This Section applies to an urban hospital who receives payment for inpatient hospital services under A.R.S. §§ 36-2903.01 and 36-2904.
  2. AHCCCS shall operate an inpatient hospital reimbursement program under A.R.S. § 36-2905.01 and this Section.
  3. Residency of the member receiving inpatient AHCCCS covered services is not a factor in determining which hospitals are required to contract with which contractors.
  4. ~~An urban~~ A contractor shall enter into a contract for reimbursement for inpatient AHCCCS covered services with one or more urban hospitals located in the same county as the ~~urban~~ contractor.
  5. A noncontracted urban hospital shall be reimbursed for inpatient services by ~~an urban~~ a contractor at 95% of the amount calculated as defined in A.R.S. § 36-2903.01 and this Article, unless otherwise negotiated by both parties.
- C. Contract Begin Date. A contract under this Article shall cover inpatient acute care hospital services for members with hospital admissions on and after October 1, 2003.
- D. Outpatient urban hospital services. Outpatient urban hospital services, including observation days and emergency room treatments that do not result in an admission, shall be reimbursed either through an urban hospital contract negotiated between a contractor and an urban hospital, or the reimbursement rates set forth in A.R.S. § 36-2903.01. Outpatient services in an urban hospital that result in an admission shall be paid as inpatient services in accordance with this Section.
- E. Urban Hospital Contract.
1. Provisions of an urban hospital contracts. The urban hospital contract shall contain but is not limited to the following provisions:
    - a. Required provisions as described in the Request for Proposals (RFP);
    - b. Dispute settlement procedures. If the AHCCCS Grievance System prescribed in A.R.S. § 36-2903.01(B) and rule is not used, then arbitration shall be used;
    - c. Arbitration procedure. If arbitration is used, the urban hospital contract shall identify:
      - i. The parties’ agreement on arbitrating claims arising from the contract,
      - ii. Whether arbitration is nonbinding or binding,
      - iii. Timeliness of arbitration,
      - iv. What contract provisions may be appealed,
      - v. What rules will govern arbitrations,
      - vi. The number of arbitrators that shall be used,
      - vii. How arbitrators shall be selected, and
      - viii. How arbitrators shall be compensated.
    - d. Timeliness of claims submission and payment;
    - e. Prior authorization;

- f. Concurrent review;
  - g. Electronic submission of claims;
  - h. Claims review criteria;
  - i. Payment of discounts or penalties such as quick-pay and slow-pay provisions;
  - j. Payment of outliers;
  - k. Claim documentation specifications under A.R.S. §36-2904.
  - l. Treatment and payment of emergency room services; and
  - m. Provisions for rate changes and adjustments.
2. AHCCCS review and approval of urban hospital contracts:
- a. AHCCCS may review, approve, or disapprove the hospital contract rates, terms, conditions, and amendments to the contract;
  - b. The AHCCCS evaluation of each urban hospital contract shall include but not be limited to the following areas:
    - i. Availability and accessibility of services to members,
    - ii. Related party interests,
    - iii. Inclusion of required terms pursuant to this Section, and
    - iv. Reasonableness of the rates.
- F. Quick-Pay/Slow-Pay. A payment made by ~~urban~~ a contractor to a noncontracted hospital shall be subject to quick-pay discounts and slow-pay penalties under A.R.S. § 36-2904.