

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**

**ARIZONA LONG-TERM CARE SYSTEM**

**PREAMBLE**

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

R9-28-702	Amend
R9-28-703	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, 36-2903, 36-2932  
Implementing statute: A.R.S. §§ 36-2999.52, 36-2999.54

**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 Final Rulemaking: 19 A.A.R. 137, February 1, 2013  
Notice of Rulemaking Docket Opening: [to be filled in by SOS editor]

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

Name: Mariaelena Ugarte  
Address: AHCCCS  
Office of Administrative Legal Services  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4693  
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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

A.R.S. § 36-2999.52 authorizes the Administration to administer a provider assessment on health care items and services provided by nursing facilities and to make supplemental payments to nursing facilities for covered Medicaid expenditures. The Administration is proposing an amendment to rule to describe the process for estimating and distributing supplemental payments to contractors for enhanced payments to eligible nursing facilities based on bed days paid for through managed care. The rule amendments also describe the process for calculating and distributing the enhanced payments to eligible nursing facilities by the Administration for beddays paid by the Administration. In addition, the rules clarify general requirements applicable to nursing facilities in order for them to qualify for the supplemental payments.

**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 the regulations for the SDAC services.

**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:**

The Administration anticipates no economic impact on the implementing agency, small businesses and consumers. The clarification to rule does not change the estimated impact described under the previous rulemaking made effective January 8, 2013.

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

Name: Mariaelena Ugarte  
Address: AHCCCS  
Office of Administrative Legal Services  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4693  
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 April 29, 2013. Please send written or email comments to the above address by the close of the comment period, 5:00 p.m., June 18, 2013.

Date: June 18, 2013  
Time: 10:00 a.m.  
Location: AHCCCS  
701 East Jefferson  
Phoenix, AZ 85034  
Nature: Public Hearing

Date: June 18, 2013  
Time: 10:00 a.m.  
Location: ALTCS: Arizona Long-Term Care System

1010 N. Finance Center Dr, Suite 201  
Tucson, AZ 85710

Nature: Public Hearing

Date: June 18, 2013

Time: 10:00 a.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:**

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.

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

None

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

**TITLE 9. HEALTH SERVICES**

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**

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**ARTICLE 7. STANDARDS FOR PAYMENTS**

Section

R9-28-702 Nursing Facility Assessment

R9-28-703 Nursing Facility Supplemental Payments

## ARTICLE 7. STANDARDS FOR PAYMENTS

### R9-28-702. Nursing Facility Assessment

**A.** For purposes of this Section, 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:

“Assessment year” means the 12 month period beginning October 1<sup>st</sup> each year

“Nursing Facility Assessment” means a tax paid by a qualifying nursing facility to the Department of Revenue on a quarterly basis established under A.R.S. § 36-2999.52.

“Medicaid days” means days of nursing facility services paid for by the Administration or its contractors as the primary payor and as reported in AHCCCS’ claim and encounter data.

“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.

“Payment year” means the 12 month period beginning October 1<sup>st</sup> each year.

**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,
3. A facility designated by the Arizona Department of Health Services as an Intermediate Care Facility for the Mentally Retarded, or
4. A tribally owned or operated facility located on a reservation.

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

1. ~~AHCCCS~~ The Administration shall utilize each nursing facility's Universal Accounting Report (UAR) submitted to the Arizona Department of Health Services as of August 1<sup>st</sup> immediately preceding the assessment year. In addition, by August 1<sup>st</sup> each year, each nursing facility shall provide ~~AHCCCS~~ the Administration with any additional information necessary to determine the assessment. For any nursing facility that does not provide by August 1<sup>st</sup> the additional information requested by ~~AHCCCS~~ the Administration, ~~AHCCCS~~ the Administration shall determine the assessment based on the information available.
2. For each nursing facility, other than a nursing facility noted in subsection (D)(3), the provider assessment is calculated by multiplying the nursing facility's non-Medicare resident day data for each assessment year by \$7.50.
3. For a nursing facility with the number of annual Medicaid 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 non-Medicare resident day data for each assessment year by \$1.00.
4. The number of annual Medicaid days used in subsection (D)(3) shall be recalculated each August 1, to achieve a slope of at least 1 applying the uniformity tax waiver test described in 42 CFR 433.68(e)(2).
5. The assessment calculated under subsections (D)(2), (D)(3) and (D)(4), shall not exceed 3.5 percent of aggregate net patient service revenue of all assessed providers.
6. ~~AHCCCS~~ The Administration will forward the provider assessment by facility to the Department of Revenue by September 1<sup>st</sup> preceding the assessment year.



7. 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.
8. In the event a nursing facility begins operation during the assessment year, that facility would have no responsibility for the assessment until such time as the facility has UAR data that falls within the collection period for the assessment calculation.
9. 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.

#### **R9-28-703. Nursing Facility Supplemental Payments**

- ~~A. On an annual basis, AHCCCS shall determine the total funds available in the nursing facility assessment fund available for supplemental payments by:~~
- ~~1. Estimating the nursing facility assessments to be collected in the upcoming assessment year;~~
  - ~~2. Subtracting one percent of the total estimated assessments, and~~
  - ~~3. Multiplying the appropriate federal matching assistance percentage (FMAP) by the difference of subsections (A)(1) and (A)(2).~~
- ~~B. AHCCCS shall calculate each year's quarterly supplemental payments to each nursing facility with Medicaid utilization, excluding ICFMRs, by:~~
- ~~1. Determining each facility's proportion of Medicaid resident bed days to total nursing facility Medicaid resident bed days by utilizing adjudicated claims and encounter data for the most recent 12 month period, including appropriate claims lag.~~
  - ~~2. Multiplying subsections (B)(1) and (A)(3).~~
  - ~~3. Dividing the payments determined under subsection (B)(2) by four.~~

~~C. AHCCCS and its contractors shall make quarterly supplemental payments to nursing facility providers.~~

~~D. Following the end of each assessment year, AHCCCS shall reconcile the supplemental nursing facility payments made during the assessment year to the annual deposits to the nursing facility assessment fund for the same year less one percent of the actual assessments deposited in the fund plus federal matching funds. The proportion of each nursing facility's Medicaid resident bed days shall be used to calculate the reconciliation amounts. AHCCCS and its contractors shall make additional payments to or recoupments from nursing facilities based on the reconciliation.~~

~~E. Aggregate supplemental payments to nursing facilities shall not exceed upper payment limits established under 42 CFR 447.272.~~

~~F. A facility must be open on the date the supplemental payment is made in order to receive a payment.~~

A. Payment by AHCCCS Contractors.

1. Before each payment year, AHCCCS the Administration shall estimate the Net Nursing Facility Assessment Fund by:
  - i. Estimating the nursing facility assessments to be collected in the upcoming assessment year,
  - ii. Subtracting one percent of the total estimated assessments, and
  - iii. Multiplying the result of (A)(1)(i) and (A)(1)(ii) by the appropriate federal matching assistance percentage (FMAP).

2. Using Medicaid resident bed day information from the most recent and complete 12 months of adjudicated claims and encounters data, AHCCCS the Administration shall determine:
  - i. The portion of the fund attributable to Medicaid resident bed days paid by contractors and by the Administration.
  - ii. The proportion of the fund attributable to each facility eligible for a payment from the fund based on the same proportion as each facility's Medicaid resident days to total Medicaid resident days for all facilities.
  
3. On a quarterly basis, contractors shall distribute enhanced payments to eligible nursing facilities based on the proportion of Medicaid bed days attributable to the contractor for each nursing facility as provided annually on the AHCCCS website. Contractors shall compute total revenues for distribution as follows:  
Formula = (C \* 0.98 ) \* (F / P) where C = CYE 13 quarterly NF Enhanced Payment by Contractor per 820 file.  
F = percentage of total MCO bed days allocated to facility/Contractor  
P = percentage of total MCO bed days allocated to Contractor
  
4. Quarterly payments otherwise required by subsection (A)(3) will not be made until such time that the Administration provides NF enhanced payments to contractors via a retroactive adjustment of capitation rates for the specified quarter.
  
5. Quarterly payments will not be made until such time that the funds are available in the nursing facility assessment fund. The available funds must be greater than or equal to the necessary funds for payment as described under subsection (A)(4).
  
- B.** Each contractor must pay each facility the amount computed within 20 calendar days of receiving the nursing facility enhanced payment from the Administration. The contractors must confirm each payment and payment date to the Administration within 30 calendar days from receipt of the funds.

C. After each assessment year, AHCCCS the Administration shall reconcile the payments made by contractors under subsection (A) and (B) to the portion of the annual collections under R9-28-702 attributable to Medicaid resident bed days paid for by contractors for the same year, less one percent, plus available federal financial participation. The proportion of each nursing facility's Medicaid resident bed days as described in subsection (A)(2)(ii) shall be used to calculate the reconciliation amounts. Contractors shall make additional payments to or recoup payments from nursing facilities based on the reconciliation in compliance with the requirements of subsection (B).

D. Payment by the Administration.

1. Quarterly, the Administration shall distribute to eligible nursing facilities the amounts collected during the preceding quarter pursuant to R9-28-702, less one percent, multiplied by the percentage calculated in subsection (A)(2) attributable to Medicaid resident days paid by the Administration, plus available federal financial participation the federal assistance percentage.
2. The Administration shall calculate each facility's payment by multiplying the amount calculated in subsection (D)(1) by the facility's FFS proportion calculated in subsection (A)(2)(ii).
3. The Administration shall distribute the FFS portion of the fund to the nursing facilities within 30 calendar days of the determination of the quarterly fund amount.

E. General requirements for all payments.

1. A facility must be open on the date the supplemental payment is made in order to receive a payment. In the event a nursing facility closes during the assessment year, the nursing facility shall cease to be eligible for supplemental payments.

2. In the event a nursing facility begins operation during the assessment year, that facility shall not receive a supplemental payment until such time as the facility has claims and encounter data that falls within the collection period for the payment calculation.
  
3. In the event a nursing facility has a change of ownership, payments shall be made to the owner of the facility as of the date of the supplemental payment.
  
4. Subsection (E)(3) shall not be interpreted to prohibit the current and prior owner from agreeing to a transfer of the payment from the current owner to the prior owner.