

**NOTICE OF FINAL 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:**

|           |       |
|-----------|-------|
| R9-28-204 | Amend |
| R9-28-205 | 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 (E)  
Implementing statute: A.R.S. § 36-2907(D) and (J), 36-2932, and 36-2939

**3. The effective date of the rule:**

The agency selected an effective date of 60 days from the date of filing with the Secretary of State as specified in A.R.S. § 41-1032(A).

**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 Proposed Exempt Rulemaking: 17 A.A.R. 1526, August 12, 2011

Notice of Exempt Rulemaking: 17 A.A.R. 1876, September 23, 2011

Notice of Rulemaking Docket Opening 19 A.A.R. 729, April 12, 2013

Notice of Proposed Rulemaking: 19 A.A.R. 697, April 12, 2013

**5. The agency’s contact person who can answer questions about the rulemaking:**

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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

The Governor's Medicaid Reform Plan, announced on March 15, 2011, proposals to reduce nonfederal expenditures for the AHCCCS program by approximately \$500 million during state fiscal year 2012. The AHCCCS Administration promulgated limitations to respite services on September 23, 2011 with an effective date of October 1, 2011.

Due to legislation specified in Laws 2012, Chapter 299, Section 7, the rule-making authority authorized in Laws 2011, Chapter 31, Section 34 (SB 1619) was repealed. Additionally, Laws 2012, Chapter 299, Section 8 stipulated that rules adopted through the previous year's authority (SB1619) would expire December 31, 2013 without specific statutory authority.

After an evaluation of the Agency's overall statutory authority regarding covered services, rates, and eligibility, AHCCCS has determined that it will re-promulgate certain rules implementing "program changes" made pursuant to Laws 2011, Chapter 31, Section 34 by identifying the specific statutory authority for the rules to ensure that the rules continue beyond December 31, 2013 in accordance with Laws 2012, Chapter 299, Section 8.

Therefore, to ensure continuity of the rules previously adopted under Section 34, the AHCCCS Administration is re-promulgating the same rules which became effective October 1, 2011. No changes have been proposed to the language of the rules.

- R9-28-204 and R9-28-205 - Limitation for respite services promulgated on September 23, 2011 with an effective date of October 1, 2011.

**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:**

Not applicable.

**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:**

See previous publications listed under item 4 for summaries of economic impacts as applicable. 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 any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:**

No significant changes were made between the proposed rulemaking and the final rulemaking. Technical or grammatical changes have been made such an update to incorporation by reference under R9-28-204(D)(2) of 42 CFR 483, Subpart I and R9-25-204(D)(5) of 42 CFR 441.151. Although not a verbatim repromulgation of the former exempt rulemaking, these incorporations by reference needed to contain the correct location at which copies of the materials may be obtained to be compliant with statute.

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

No comments were received as of the close of the comment period of May 13, 2013.

**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 are applicable.

**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:**

Not applicable.

**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 2. COVERED SERVICES**

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**

**ARTICLE 2. COVERED SERVICES**

**R9-28-204. Institutional Services**

**A. No Change**

1. No Change
2. No Change
3. No Change

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

1. No Change
2. No Change
3. No Change
4. No Change
5. No Change
6. No Change
7. No Change
8. No Change
9. No Change
10. No Change
11. No Change
- ~~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. No Change**

1. No Change
  - a. No Change

- b. No Change
- c. No Change
- d. No Change
- e. No Change

2. No Change

**D. Limitations.** The following limitations apply:

1. No Change

- a. No Change
- b. No Change

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~~ incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation 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. No Change
  - a. No Change
  - b. No Change
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~~ incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation contains no future editions or amendments; and
6. No Change
  - a. No Change
  - b. No Change

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

- A. No Change
- B. No Change
- C. Home and community based services include the following:
  1. No Change
    - a. No Change
    - b. No Change
    - c. No Change
    - d. No Change
    - e. No Change
    - f. No Change
    - g. No Change
  2. No Change
  3. No Change

4. No Change
5. No Change
  - a. No Change
  - b. No Change
  - c. No Change
  - d. No Change
  - e. No Change
  - f. No Change
6. No Change
7. No Change
8. No Change
- ~~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;<sub>2</sub>
  - b. Occupational therapy;<sub>2</sub>
  - c. Speech and audiology services;<sub>2</sub>
  - d. Training in independent living;<sub>2</sub>
  - e. Special development skills that are unique to the member;<sub>2</sub>
  - f. Sensory-motor development;<sub>2</sub>
  - g. Behavior intervention;<sub>2</sub> and
  - h. Orientation and mobility training;<sub>2</sub>
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;<sub>2</sub>
  - b. Personal care;<sub>2</sub>
  - c. Activities of daily living skills training;<sub>2</sub> and
  - d. Habilitation services;<sub>2</sub> ~~and~~
12. No Change