

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ARIZONA LONG-TERM CARE SYSTEM

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action:</u> |
|---|----------------------------------|
| R9-28-101 | Amend |
| R9-28-509 | New Section |
| R9-28-510 | 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. § 36-2932
Implementing statute: A.R.S. §§ 36-2932, 36-2938
- 3. The effective date of the rule:**
The agency requests an effective date of January 1, 2013. As required by A.R.S. § 41-1032 (A)(4), the rulemaking provides a benefit to the public and a penalty is not associated with a violation of the rule.
- 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 Rulemaking Docket Opening: 18 A.A.R. 2084, August 24, 2012
Notice of Proposed Rulemaking: 18 A.A.R. 2050, August 24, 2012
- 5. The agency's contact person who can answer questions about the rulemaking:**
Name: Mariaeleno Ugarte
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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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**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 AHCCCS Administration is proposing rulemaking that provides elderly and disabled AHCCCS long-term care beneficiaries (AHCCCS beneficiary) flexibility and control with respect to the way in which attendant services and supports are provided in their homes or other community based settings. Attendant care services

consist of nonprofessional assistance with activities of daily living and other services such as housekeeping. AHCCCS currently has a rule regarding this topic, Self-Directed Attendant Care R9-28-508, which was adopted as a final rule in 2011. Since that time, Congress adopted section 1915(k) of the Social Security Act, the Community First Choice (CFC) state plan option. AHCCCS plans to elect the “Agency with Choice” CFC state plan option. Both, Agency with Choice and Self-Directed Attendant Care (SDAC) are member-directed service models. The models are not a service, but rather a manner in which services are delivered. By way of example of the differences, under Self- Directed Attendant Care, the AHCCCS beneficiary or their legal guardian serves as the legal employer of the paid caregiver. Under Agency with Choice, the agency serves as the legal employer of the paid caregiver while AHCCCS beneficiaries or their individual representatives assume some of the employer-based responsibilities. ALTCS members who receive attendant care services may choose the available service model best suited to their needs: CFC, Self-Directed Attendant Care or the traditional service model where the Contractor directs the provision of attendant care services..

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:

A study was not referenced or relied upon when revising the regulations for Agency with Choice. .

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:

The adoption of the Agency with Choice, member-directed service model is not expected to increase the number of services nor the quantity of service hours. The adoption of the member-directed service model, and subsequent approval of a state plan amendment from the Centers for Medicare and Medicaid Services, avails AHCCCS the opportunity to receive an increased six-percent Federal Medical Assistance Percentage for services and supports provided to AHCCCS beneficiaries that elect the Agency with Choice, member directed service model. Services and supports eligible for the increased FMAP must meet criteria required by the Centers for Medicare and Medicaid Services. Thus, the adoption of the model may result in state general fund savings of up to approximately 3M per year.

Agencies that have offered a comparable service model option to AHCCCS beneficiaries have noted, as a result of the shared employer-based responsibilities, reductions in administrative costs. Similarly, they have noted an increase in employee retention and customer satisfaction.

AHCCCS beneficiaries will have access to more than one member-directed service model in lieu of receiving attendant care services and supports under a traditional service model. In the event the AHCCCS beneficiary does not want to act as the legal employer and assume all employer-based responsibilities of the employer of the paid caregiver, they can still assume, under the Agency with Choice service model, some of the employer-based responsibilities while receiving assistance from the agency that employs the paid caregiver.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

The definition of “individual representative” was moved from the general definition section to the rule applicable only to the Agency with Choice model. No other changes were made between the proposed rulemaking and the final rulemaking.

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

The following comments were received as of the close of the comment period 5 p.m. September 24, 2012. The majority of the concerns were in relation to the definition of “individual representative” defined were the representative cannot be a paid caregiver as well as the representative, As a result of these concerns the agency in conjunction with CMS has chosen to limit the definition of “individual representative” to the agency with choice option model.

Item #	Comment From	Comment	Analysis/Recommendation
1.	William Woody (Consumer Direct AZ)	<p>We use the personal representative to bring in another set of eyes to ensure the care and the quality of care is received. It works very well especially in rural areas. Personal representative does not act as the paid caregiver. Supportive of the definition of Individual Representative.</p> <p>Please accept this correction to my public comment during today's hearing on Arizona's implementation of the Community First Choice Option. I am not in favor of the rule as written if the rule requires the Personal Representative (PR) to be present during the delivery of service. If this were to be the case then someone will have to compensate the PR for their time. I assume that increasing costs to ALTCS is not the goal.</p> <p>Additionally, in each of the other 9 states we provide Medicaid personal assistance in, requiring the PR to be present is considered an unnecessary, onerous, and impractical burden to the consumer, as it would require them finding not just a personal care worker but also a PR to present during the shift, thereby creating an unfair accessibility hurdle to those using the PR option.</p>	The rule does not require the individual representative to be present during the delivery of care. The Administration has reconsidered the term “individual representative” and has limited its application to the Agency with Choice option.

2.	Barbara Jones (parent)	<p>According to this law it will bring another level of bureaucracy, which was not the intent when we wrote the law. The parents who actively participate are affected. The reason the agencies were brought in was to remove the state from the equation. The agencies that came about were established to not cost the state more money. Now you are developing another layer that the parents must go through, and parents get the short end of stick. Parents actively participate in their child's care but cannot be expected to do everything. I currently receive 80 hours a month for attendant care and habilitation. He requires more care than what I currently receive. The agency that is responsible/accountable to the state should be the one to develop the additional safeguards. This should be the agencies responsibility not the state.</p> <p>Who is in charge of this agency? What is the difference from Angels with Wings and this agency? Why have these different agencies? Why is it necessary to have this agency and why do you need to come to us? What safeguards is there that are not being spelled out?</p> <p>-It should be the role of the agencies and/or the support coordinators to ensure the quality and provide safeguards to the provision of services.</p> <p>-Members are not getting all of the services they need. Additionally, family members (guardians) who are paid caregivers are only getting paid for a small portion of the services that are needed to support the family member and, therefore, saving the state money.</p> <p>-Individual Representative policy will require them to get someone (an "outsider") involved who doesn't understand the system, their child.</p>	<p>The Agency with Choice model is a proposed new, member-directed option for ALTCS members living in their own home and receiving attendant care, personal care, homemaker or habilitation services. Member-directed options are not service, but rather pertain to the way in which services are delivered. They allow members an opportunity to have more control over how services are provided. Currently AHCCCS only has one member-directed option, Self-Directed Attendant Care (for individuals who are elderly or have physical disabilities) and the Independent Provider Network (for individuals with developmental disabilities). For both of these options, the member is the legal employer of the caregivers. AHCCCS is utilizing the Community First Choice Option (Section 1015 (k) of the Social Security Act) to provide an additional member-directed option. For members who may desire to direct their own care, but are not interested in being the legal employer of the caregiver, AHCCCS is proposing the Agency with Choice option. Under this option, the member and the agency enter into a co-employment relationship. The agency serves as the legal employer (hires, fires and provides required training for the caregiver). The member may assume one or more of the following employer-based responsibilities including recruiting, selecting, dismissing, determining duties, scheduling, specifying training to meet the unique needs of the member and supervising the paid caregivers on a day-to-day basis. Agencies contracted by the ALTCS Contractors will have the opportunity to offer this option to members. The Agency with Choice, member-directed option does not create a new service system or agency.</p> <p>The Individual Representative conflict of interest provision will be applied only to members choosing the Agency with Choice option. It was during the Agency with Choice, member-directed option development process that</p>

		<p>How does it affect parents in the traditional model? Why are you saying that we can care for our child and not get paid for it?</p>	<p>AHCCCS was enlightened about CMS' (Centers for Medicare and Medicaid Services) requirement for the conflict of interest provision (prohibition of Individual Representatives also serving paid caregivers). The conflict of interest provision does not prohibit non-legally responsible family members from being paid caregivers. The rulemaking does prohibit any paid caregiver, including a family member, from also acting as the individual's representative when receiving services through the Agency with Choice model.</p>
3.	Ruth Chavez (Good Neighbor)	<p>Does this apply to both DD and HCBS?</p> <p>How was the individual representation incorporated by William Woody? We are having difficulty as an agency.</p> <p>What if there isn't a third person? Would we need to bring in a paid caregiver to be the representative?</p>	<p>The Administration has reconsidered the term "individual representative" and has limited its application to the Agency with Choice option. Yes</p> <p>Caregivers can be part of the service plan process; another individual would need to authorize the plan.</p> <p>It cannot be the same person providing the HCBS services to that individual that needs services authorized.</p>
4.	Carolyn Griffiths (Consumer Direct AZ)	Supportive of this model and the conflicts of interest policy.	
5.	Kim Simmons (DES/DDD)	Clarification needed for the Natural Support services definition.	Under the federal rule the natural support services are provided voluntarily, if the services are medically necessary they are provided by the contractor.
6.	Alisa Nelson (parent)	<p>-AHCCCS did not widely publicize that they were contemplating the conflict of interest policy nor did they widely publicize the opportunity to provide input.</p> <p>-It should be the role of the agencies and/or the support coordinators to ensure the quality and provide safeguards to the provision of services</p> <p>-Members are not getting all of the services they need. Additionally, family members (guardians) who are paid caregivers are only getting paid for a small portion of the services that are needed to support the</p>	<p>AHCCCS posted the notice of proposed rulemaking on August 2, 2012.</p> <p>AHCCCS sent correspondence to the Division of Developmental Disabilities on three occasions throughout the months of August and September 2012. The information was sent out via a list serve and posted on the website.</p>

		<p>family member and, therefore, saving the state money.</p> <ul style="list-style-type: none"> -Individual Representative policy will require them to get someone (an “outsider”) involved who doesn’t understand the system, their child -Guardians are legally responsible to make sure the individuals needs are met 	<p>AHCCCS has a new member-directed options webpage that provides information on the proposed Agency with Choice option including information on the federal rules, proposed state rules and how to provide public comment.</p>
7.	Unknown friend	We deserve the right to be seen as we are, and not in light the government sees. You cannot understand our position; we give up our life for our children who need our help.	This comment was received at the oral proceeding in relation to the issue of the individual representative not being a paid caregiver. As a result of these comments, the Administration has reconsidered the term “individual representative” and has limited its application to the Agency with Choice option.
8.	Unknown caller	Whether or not a parent/guardian/representative can get paid to be the ADH provider?	Attempted to call, no response received. In general a parent/guardian/representative can get paid if they are the paid caregiver..... The Administration has reconsidered the term “individual representative” and has limited its application to the Agency with Choice option.
9.	Stuart Goldman (guardian)	<p>Written comment stating :</p> <p>One commenter questioned if an individual’s representative assisting the individual to self-direct and manage their services can be paid as part of the service plan.</p> <p>Response: Individuals acting as a representative are not paid to do so. Individuals acting as a representative also should not be a paid caregiver of an individual receiving CFC services and supports. This arrangement was prohibited in the section 1915(j) regulation, to avoid a conflict of interest.</p> <p>We are modifying the definition of “Individual’s representative” to continue this prohibition.</p> <p>It is not clear from the text if a guardian CAN waive the representative obligation. Can one co-guardian request in writing that the other assume the representative role for CFC while she serves as the provider? I am unsure about how single guardians can meet their obligation to the State and waive the obligation at the same time.</p> <p>It is unclear if an agency can act as the representative because of the conflict issue and it would also have to be uncompensated for the time.</p>	<p>The terms of each guardianship may vary depending on the court order granting guardianship. The AHCCCS Administration cannot provide guidance on individual cases or legal advice. We recommend you consult with an attorney.</p> <p>The Administration has reconsidered the term “individual representative” and has limited its application to the Agency with Choice option. The provider agency cannot also be an individual representative even if the provider</p>

	<p>Since it is DDD and an agency that enter into a contract, can the agency be assumed to be the provider while a parent, etc. acts just as an employee of the agency?</p> <p>Why is the change being made? What problem is it addressing? What other solutions were considered?</p> <p>Is the DDD process legal, since guardians are appointed by the Superior Court of Arizona and they might not be able to waive their role without a court order?</p> <p>If the parent continues to provide the service, who can be the representative? What qualifications need to be met? Who approves?</p> <p>Does the representative need to sign the various DDD forms monthly forms confirming the services were received?</p> <p>If so, how can this be accomplished if the representative does not live with the client? Does this just become a rubber stamp?</p> <p>At the ISP meetings, if the parent can not be the representative and has a friend, etc. act in that role, is it not likely the representative would parrot the parent's desire, so what is gained?</p> <p>If no representative can be assigned, how is the ISP meeting conducted? Does DDD represent the client?</p> <p>If so, is it legal for DDD to play two roles simultaneously?</p> <p>We understand that in the corresponding IEP (Individual Educational Plan) process situation, the court must appoint a surrogate parent to represent the client to prevent the state from playing both roles.</p> <p>Can a married couple who share care giving also share the responsible persons' role? Can the husband sign for the services performed by the wife and visa versa?</p>	<p>agency does not charge for time associated with service planning.</p> <p>The parent who is an employee of the agency is a paid caregiver. The paid caregiver cannot also be an individual representative.</p> <p>This change is being made in response to federal regulations affecting the Medicaid program. As such, AHCCCS does not have flexibility to implement other solutions.</p> <p>In general, orders appointing guardians do not require the guardian to be a paid caregiver. This regulation does not require the guardian to relinquish their responsibilities as the guardian, although the guardian may have to forego acting as the paid caregiver.</p> <p>The Administration has reconsidered the term “individual representative” and has limited its application to the Agency with Choice option.</p> <p><i>See Federal regulation 42 CFR 441. Individual's representative means a parent, family member, guardian, advocate, or other person authorized by the individual to serve as a representative in connection with the provision of CFC services and supports.</i></p>
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	<p>If not, can one of the married couple act as the representative while the other is the provider? How often can the roles be reversed? Annually? Monthly? Weekly? Hourly? What documentation is required by DDD? Are there any circumstances under which the rule can be waved? If so, what are they?</p> <p>Has this change been vetted by DDD with the State legislature and Superior Court? It is likely that some parents/guardians/representatives may seek relief by appeals to DDD, Representatives of the State legislature, or suits to the Superior court so it would be good to be aware of rulings previously provided.</p>	<p><i>This authorization should be in writing, when feasible, or by another method that clearly indicates the individual's free choice. An individual's representative may not also be a paid caregiver of an individual receiving services and supports under this subpart.</i></p> <p>See DDD for process and guidance of the various forms.</p> <p>The expectation is that the individual representative is acting on behalf of the member, not the member's parent.</p> <p>If a member is unable to represent themselves a guardian should be appointed. DDD cannot act as the client's individual representative because that would present a conflict of interest.</p> <p>These are federal regulations separate and apart from the state judicial process.</p>
10.	<p>Steven Goodrich (Assistant Attorney General)</p> <p>This message sets out questions regarding the proposed amendments to A.A.C. R9-28-101(B) (adding definitions of "Individual's representative" and "natural support services"), and the proposed new A.A.C. R9-28-509 (adding the "Agency with Choice" service model for members of the Arizona Long Term Care System, or "ALTCS").</p> <p>A. Definition of "individual's representative"</p> <p>1. The "individual's representative" definition is set out in R9-28-101, which contains definitions that apply to Title 9, Chapter 28 of the Arizona Administrative Code. The "individual's representative" term is used in R9-28-509 (the new rule creating the "Agency with Choice" service model), but does not appear anywhere else in Chapter 28. Does AHCCCS intend that the last sentence of the definition of "individual's representative",</p>	

	<p>which prohibits an "individual's representative" from working as a paid caregiver with respect to the individual, apply generally to all ALTCS members and all services and supports provided to the member?</p> <p>2. The proposed definition uses the words "individual" and "individual's representative", the same terminology used in the federal rule regarding the Community First Choice program(42 C.F.R. Section 441.505). However, "individual" is not defined in the AHCCCS rules; the term "member" as defined in A.R.S. 36-2931 and R9-28-901 is used in the AHCCCS rules. Wouldn't it be clearer to use the words "member" and "member's representative" instead of "individual" and "individual's representative" in the proposed AHCCCS rule?</p> <p>3. The definition of "Co-employment relationship" set out in proposed R9-28-509(A) uses the phrase "ALTCS member or authorized representative". Is the "authorized representative" different than the "Individual's representative"?</p> <p>4. In proposed R9-28-509(C), the phrase "member or the member's individual's representative" is used in the first sentence; then, the phrase "member or authorized representative" is used in the second sentence. Wouldn't it be clearer to use the phrase "member or member's representative" throughout?</p> <p>5. May a family member with rights and duties under law (such as the parent of a minor or guardian of an adult) with respect to an</p>	<p>The Administration has reconsidered the term "individual representative" and has limited its application to the Agency with Choice option.</p> <p>Agreed, the definition of "individual representative" has been revised.</p> <p>Agreed, changed rule language.</p> <p>Agreed, changed rule language.</p>
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	<p>ALTCS member serve as a paid caregiver for that member, so long as some other person is designated as the "individual's representative"(some possible examples are set out in nos. 6 and 7 below)?</p> <p>6. If one parent is designated as the "individual's representative", may that parent's spouse be a paid caregiver, even though under community property law the parent serving as the individual's representative has rights to the consideration being paid to the caregiver/spouse?</p> <p>7. May the guardian of an ALTCS member serve as a paid caregiver if the guardian appoints some other person as the ALTCS member's individual's representative? Would such an arrangement effectively eliminate any conflict of interest, since presumably the guardian would retain the right to terminate the designation of the individual's representative?</p> <p>B. "Agency with Choice" Service Model</p> <p>1. Proposed R9-28-509(B): will AHCCCS set out criteria for establishing, amending, and terminating the “co-employment relationship” contemplated by the Agency with Choice model?</p> <p>2. The proposed rule does not mention the federal “Community First Choice” program or the rules relating to that program (42 C.F.R. Part 441, Subpart K, 42 C.F.R. Sections 441.500-591).</p>	<p>Under 42 CFR 440.167 the parent of a minor child may not be a paid provider of personal care or attendant care services. Unless otherwise defined by the agency.</p> <p>Yes, the agency will provide further guidance to contractors through policy.</p> <p>Yes.</p>
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		<p>Will every ALTCS member electing "Agency with Choice" (and the agency working with that member) be subject to those rules?</p> <p>C. Definition of "Natural Support Services"</p> <p>1. The definition of "Natural Support Services" set out in proposed R9-28-101(B) states that such services "cannot supplant other covered services". Does that mean that in determining the appropriate amount of covered services to be provided by paid caregivers, the current level of natural support services should be disregarded?</p>	<p>At the outset of the service planning process, the appropriate level of medically necessary covered services should be determined. To the extent natural supports are voluntarily provided, the contractor's responsibility for arranging paid caregivers is reduced.</p>
11.	Heidi Davis (Consumer Direct AZ)	<p>Arizona Consumer Direct fully supports the Community First Choice option. Besides bringing needed revenue to the State of Arizona, it also increases the control and choice individuals have over services and the people who provide them.</p> <p>A current barrier for Arizona's Community First Choice plan being approved by the federal government is that legal guardians can be service providers. This problem is easily remedied by the use of personal representatives chosen by the guardian. The personal representative adds an element of quality control by approving time sheets and overseeing that services are delivered according to the care/service plan.</p> <p>Representatives are used in the ten (10) states where Consumer Direct provides services. Some of the states are very rural which does not seem to impede locating a personal representative. Consumer Direct does not believe it necessary that the representative be present when services are delivered which is the current expectation in the SDAC rule. This expectation can make it difficult for guardians and individuals in need of services to find a personal representative. Consumer Direct is committed to assisting guardians locate representatives that can provide a needed level of oversight so that individuals in need of services can self - direct</p>	<p>Thank you for your support.</p>

		their own care. We commend Arizona Long Term Care and the citizens of Arizona for pursuing the Community First Choice option.	
12.	Sharon Gordon (parent)	<p>I understand the proposed rule affects HCBS services under ALTCS. Does it also affect residential options such as Adult Developmental Homes or adult family homes where an individual lives with a family who is reimbursed for care vs. a group home?</p> <p>I am opposed to this ruling as the guardian of a disabled adult. I was just in the process of redoing my will and guardianship. I had made arrangements for a friend to become the guardian of my adult disabled child in my will, with the understanding that the guardian would also provide care which was reimbursable under current ALTCS rules. Under the proposed rule no advocate, guardian, parent, relative, or representative can be reimbursed for care provided to the beneficiary. It is very unfair and can even be emotionally harmful to some individuals who are bonded to long term friends or providers whom we as parents consider to be the safest option to care for our children when we can no longer provide care ourselves, only to now be told that those persons can no longer be paid for such care if they care enough to become our child's guardian or representative.</p> <p>I understand the financial savings to Arizona's General Fund by doing this...well, I don't really understand it unless it is some type of governmental blackmail, but I do understand that it will save 3 million dollars. <u>However it is an absolute insult to have this rule touted as an effort to expand the availability of member-directed service options for individuals enrolled in ALTCS. This does not benefit individuals enrolled in ALTCS who need guardians or representatives or advocates....in hurts them.</u> I expect my comments to be heard as if I were personally appearing at the hearing. This is a "no" support vote. I wonder how many people at the hearing will be aware that the rule is already set to be implemented in January. How is that appropriate when the final hearing hasn't even been held?</p> <p>According to the social security act, attendant care CAN be provided by a family member. So why is that being disallowed under the new rule?</p>	<p>Yes.</p> <p>The Agency with Choice option is being implemented to provide members with an additional option to direct and manage their own care.</p> <p>The Administration has reconsidered the term "individual representative" and has limited its application to the Agency with Choice option.</p>

	<p>(k) ^[355] State Plan Option to Provide Home and Community based Attendant Services and Supports.—</p> <p>(A) Availability.—The State shall make available home and community-based attendant services and supports to eligible individuals, as needed, to assist in accomplishing activities of daily living, instrumental activities of daily living, and health-related tasks through hands-on assistance, supervision, or cueing—</p> <p>(III) <u>provided by an individual who is qualified to provide such services, including family members (as defined by the Secretary).</u></p>	
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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:

Section 1915k of the Social Security Act provides the state the authority to implement Agency with Choice option but the rule is not more 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.

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 1. DEFINITIONS

Section

R9-28-101. General Definitions

ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

Section

R9-28-509. Reserved Agency with Choice

R9-28-510. Case Management

TITLE 9. HEALTH SERVICES
CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ARIZONA LONG-TERM CARE SYSTEM

ARTICLE 1. DEFINITIONS

R9-28-101. General Definitions

A. Location of definitions. Definitions applicable to Chapter 28 are found in the following:

Definition Section or Citation

"210" 42 CFR 435.211

"217" 42 CFR 435.217

"236" 42 CFR 435.236

"Acute" R9-28-301

"ADHS" R9-22-101

"ADL" R9-28-101

"Administration" A.R.S. § 36-2931

"Advance notice" R9-28-411

"Aged" R9-28-402

"Aggregate" R9-22-701

"Aggression" R9-28-301

"AHCCCS" R9-22-101

"AHCCCS registered provider" R9-22-101

"ALTCS" R9-28-101

"ALTCS acute care services" R9-28-401

"Alternative HCBS setting" R9-28-101

"Ambulance" A.R.S. § 36-2201

"Ambulation" R9-28-301

"Applicant" R9-22-101

"Assessor" R9-28-301

~~"Associating time with an event and an action"~~ R9-28-301

"Auto-assignment algorithm" or "Algorithm" R9-22-1701

"Bathing" R9-28-301

"Bathing or showering" R9-28-301

"Bed hold" R9-28-102

"Behavior intervention" R9-28-102

"Behavior management services" R9-22-1201
"Behavioral health evaluation" R9-22-1201
"Behavioral health medical practitioner" R9-22-1201
"Behavioral health professional" R9-20-101
"Behavioral health service" R9-20-101
"Behavioral health technician" R9-20-101
"Billed charges" R9-22-701
"Blind" 42 U.S.C. 1382c(a)(2)
"Capped fee-for-service" R9-22-101
~~"Caregiver training" R9-28-301~~
"Case management plan" R9-28-101
"Case management" R9-28-1101
"Case manager" R9-28-101
"Case record" R9-22-101
"Categorically-eligible" R9-22-101
"Certification" R9-28-501
"Certified psychiatric nurse practitioner" R9-22-1201
"CFR" R9-28-101
"Child" R9-22-1503
~~"Chronic" R9-28-301~~
"Clarity of communication" R9-28-301
"Clean claim" A.R.S. § 36-2904
~~"Climbing stairs or a ramp" R9-28-301~~
"Clinical supervision" R9-22-201
"CMS" R9-22-101
"Community mobility" R9-28-301
"Community spouse" R9-28-401
"Consecutive days" ~~R9-28-901~~ R9-28-801
"Continence" R9-28-301
"Contract" R9-22-101
"Contract year" R9-22-101
"Contractor" A.R.S. § 36-2901
"Cost avoid" R9-22-1201 or R9-22-1001
"County of fiscal responsibility" R9-28-701
"Covered services" R9-28-101
"CPT" R9-22-701
"Crawling and standing" R9-28-301

"CSRD" R9-28-401
"Current" R9-28-301
"Day" R9-22-101 or R9-22-1101
"De novo hearing" 42 CFR 431.201
"Department" A.R.S. § 36-2901
"Developmental disability" or "DD" A.R.S. § 36-551
"Diagnostic services" R9-22-101
"Director" R9-22-101
"Disabled" R9-28-402
"Disenrollment" R9-22-1701
"Disruptive behavior" R9-28-301
"DME" R9-22-101
"Dressing" R9-28-301
"Eating" R9-28-301
"Eating or drinking" R9-28-301
"Elderly" R9-28-301
"Emergency medical services for the non-FES member" R9-22-201
"Emotional and cognitive functioning" R9-28-301
"Employed" R9-28-1320
"Encounter" R9-22-701
"Enrollment" R9-22-1701
"EPD" R9-28-301
"E.P.S.D.T. services" 42 CFR 440.40(b)
"Estate" A.R.S. § 14-1201
"Experimental services" R9-22-104 R9-22-203
"Expressive verbal communication" R9-28-301
"Facility" R9-22-101
"Factor" 42 CFR 447.10
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"Grooming" R9-28-301
"GSA" R9-22-101
"Guardian" A.R.S. § 14-5311
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"HCBS" or "Home and community based services" A.R.S. §§ 36-2931
"Health care practitioner" R9-22-1201
"History" R9-28-301
"Home" R9-28-101 and R9-28-901 R9-28-801
"Home health services" R9-22-201
"Hospice" A.R.S. § 36-401
"Hospital" R9-22-101
"ICF-MR" or "Intermediate care facility for the mentally retarded" 42 U.S.C. 1396d(d)
"IADL" R9-28-101
"IHS" R9-22-101
"IMD" or "Institution for mental diseases" 42 CFR 435.1010
"Immediate risk of institutionalization" R9-28-301
"Individual Representative" R9-28-509
"Institutionalized" R9-28-401
"Institutionalized spouse" R9-28-101
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"License" or "licensure" R9-22-101
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"Medical assessment" R9-28-301
"Medical or nursing services and treatments" or "services and treatments" R9-28-301
"Medical record" R9-22-101
"Medical services" A.R.S. § 36-401
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"Member" A.R.S. § 36-2931 and R9-28-901
"Mental disorder" A.R.S. § 36-501
"MMMNA" R9-28-401
"Mobility" R9-28-301
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"Noncontracting provider" A.R.S. § 36-2931
"Nursing facility" or "NF" 42 U.S.C. 1396r(a)
"Occupational therapy" R9-22-201
"Orientation" R9-28-301
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"Physical therapy" R9-22-201
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~~"Physically lift" R9-28-301~~
"Physician" R9-22-101
"Physician consultant" R9-28-301
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"Post-stabilization care services" 42 CFR 438.114
"Practitioner" ~~R9-22-204~~ R9-22-101
"Primary care provider" or "(PCP)" R9-22-101
"Primary care provider services" R9-22-201
"Prior authorization" R9-22-101
"Prior period coverage" or "PPC" R9-22-101
"Program contractor" A.R.S. § 36-2931
"Provider" A.R.S. § 36-2931
"Psychiatrist" R9-22-1201
"Psychologist" R9-22-1201
"Psychosocial rehabilitation services" R9-22-201
"Qualified behavioral health service provider" R9-28-1101
"Quality management" R9-22-501
"Radiology" R9-22-101
"Reassessment" R9-28-103
"Recover" R9-28-901
"Redetermination" R9-28-401
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"Regional behavioral health authority" or "RBHA" A.R.S. § 36-3401
"Reinsurance" R9-22-701
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"Representative" R9-28-401
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"Respite care" R9-28-102
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"Room and board" R9-28-102
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"Scope of services" R9-28-102
"Section 1115 Waiver" A.R.S. § 36-2901
"Self-injurious behavior" R9-28-301
"Sensory" R9-28-301
"Seriously mentally ill" or "SMI" A.R.S. § 36-550
"Social worker" R9-28-301
"Special diet" R9-28-301
"Speech therapy" R9-22-201
"Spouse" R9-28-401
"SSA" 42 CFR 1000.10
"SSI" 42 CFR 435.4
"Subcontract" R9-22-101
"TEFRA lien" ~~R9-28-901~~ R9-28-801
"Therapeutic leave" R9-28-501
"Toileting" R9-28-301
"Transferring" R9-28-301
"TRBHA" R9-22-1201
"Tribal contractor" R9-28-1101
"Tribal facility" A.R.S. § 36-2981
"Utilization management/review" R9-22-501
"Ventilator dependent" R9-28-102
"Verbal or physical threatening" R9-28-301
"Vision" R9-28-301
"Wandering" R9-28-301
"Wheelchair mobility" R9-28-301

B. General definitions. In addition to definitions contained in A.R.S. §§ 36-551, 36-2901, 36-2931, and 9 A.A.C. 22, Article 1, the following words and phrases have the following meanings unless the context of the Chapter explicitly requires another meaning:

"ADL" or "Activities of Daily Living" mean activities a member must perform daily for the member's regular day-to-day necessities, including but not limited to mobility, transferring, bathing, dressing, grooming, eating, and toileting.

"ALTCS" means the Arizona Long-term Care System as authorized by A.R.S. § 36-2932.

"Alternative HCBS setting" means a living arrangement approved by the Director and licensed or certified by a regulatory agency of the state, where a member may reside and receive HCBS, including:

For a person with a developmental disability specified in A.R.S. § 36-551:

Community residential setting defined in A.R.S. § 36-551;

Group home defined in A.R.S. § 36-551;

State-operated group home under A.R.S. § 36-591;

Group foster home under R6-5-5903;

Licensed residential facility for a person with traumatic brain injury under A.R.S. § 36-2939;

Behavioral health adult therapeutic home under 9 A.A.C 20, Articles 1 and 15;

Level 2 and Level 3 behavioral health residential agencies under 9 A.A.C. 20, Articles 1, 4, 5, and 6; and

Rural substance abuse transitional centers under 9 A.A.C. 20, Articles 1 and 14; and

For a person who is EPD Elderly and Physically Disabled (EPD) under R9-28-301, and the facility, setting, or institution is registered with AHCCCS:

Adult foster care defined in A.R.S. § 36-401 and as authorized in A.R.S. § 36-2939;

Assisted living home or assisted living center, units only, under A.R.S. § 36-401, and as authorized in A.R.S. § 36-2939;

Licensed residential facility for a person with a traumatic brain injury specified in A.R.S. § 36-2939;

Behavioral health adult therapeutic home under 9 A.A.C. 20, Articles 1 and 15;

Level 2 and Level 3 behavioral health residential agencies under 9 A.A.C. 20, Articles 1, 4, 5, and 6; and

Rural substance abuse transitional centers under 9 A.A.C. 20, Articles 1 and 14.

"Case management plan" means a service plan developed by a case manager that involves the overall management of a member's care, and the continued monitoring and reassessment of the member's need for services.

"Case manager" means a person who is either a degreed social worker, a licensed registered nurse, or has a minimum of two years of experience in providing case management services to a person who is EPD.

"CFR" means Code of Federal Regulations, unless otherwise specified in this Chapter.

"Covered services" means the health and medical services described in Articles 2 and 11 of this Chapter as being eligible for reimbursement by AHCCCS.

"Home" means a residential dwelling that is owned, rented, leased, or occupied by a member, at no cost to the member, including a house, a mobile home, an apartment, or other similar shelter. A home is not a facility, a setting, or an institution, or a portion of any of these that is licensed or certified by a regulatory agency of the state as a:

Health care institution under A.R.S. § 36-401;

Residential care institution under A.R.S. § 36-401;

Community residential setting under A.R.S. § 36-551; or

Behavioral health facility under 9 A.A.C. 20, Articles 1, 4, 5, and 6.

"IADL" or "Instrumental Activities of Daily Living" mean activities related to independent living that a member must perform, including but not limited to:

Preparing meals,

Managing money,

Shopping for groceries or personal items,

Performing light or heavy housework, and

Use of the telephone.

"IHS" means the Indian Health Service.

"Institutionalized spouse" means the same as defined in 42 U.S.C. 1396r-5.

"JCAHO" means the Joint Commission on Accreditation of Healthcare Organizations

"Natural Support Services" are services provided voluntarily by a person not legally obligated to provide those services. The services are specified in the service plan as described under R9-28-510 and cannot supplant other covered services.

R9-28-509. Reserved Agency with Choice

A. Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings specific to this Section:

"Agency" means a provider of home and community based services, other than an individual, that has a co-employment relationship with one or more members for purposes of this Section. .

"Co-employment relationship" means a situation where the Agency serves as the legal employer of record and the ALTCS member or individual representative assumes certain responsibilities related to directing and or managing care.

"Individual's representative" means a parent, family member, guardian, advocate, or other person authorized by the member to serve as a representative in connection with the provision of services and supports. This authorization should be in writing, when feasible, or by another method that clearly indicates the member's free choice. An individual's representative may not also be a paid caregiver of a member receiving services and supports.

"Standardized training" means minimum training standards required of all paid caregivers by the Administration as specified in contract.

- B.** Purpose. The Agency with Choice program is an ALTCS member directed service model for the provision of home and community based services. Under this model, the ALTCS member or individual's representative and the agency enter into a co-employment relationship.
- C.** In lieu of receiving HCBS services under a traditional service model, a member or the member's individual representative may choose to participate in the Agency with Choice service model. Under the Agency with Choice service model the agency shall maintain the authority to hire and fire paid caregivers and provide standardized training to the caregiver, and the member or individual representative may elect to recruit, select, dismiss, determine duties, schedule, specify training to meet the unique needs of the member, and supervise the paid caregivers on a day-to-day basis.
- D.** Setting. This program is applicable to ALTCS members who reside in their own home.
- E.** A member who chooses to receive services under the Agency with Choice service model is not precluded from receiving medically necessary, cost-effective services and supports from other agencies or providers if the services provided are not duplicative of the specific attendant care or skilled service already received through the contractor.

R9-28-510. Case Management

- A.** A program contractor shall assign to each member a case manager to identify, plan, coordinate, monitor, and reassess the need for and provision of long-term care services.
- B.** A case manager shall:
1. Ensure that appropriate ALTCS placement and services are provided for a member within 30 days of enrollment;
 2. Develop a service plan by:
 - a. Completing a case management plan when a member is enrolled in ALTCS and authorizing services for a member who continues to be financially and medically eligible for services;
 - b. Ensuring that a member participates in the preparation of the member's case management plan;
 - c. Specifying the paid and natural support services to be received by the member, including the duration, scope of services, units of service, frequency of service delivery, provider of services, and effective time period; and
 - d. Coordinating with the primary care provider in determining the necessary services for the member, including hospital and medical services;
 3. Submit a written justification to the case manager's supervisor to include HCBS in the case management plan if the services exceed 80 percent of the institutional cost;
 4. Manage a case management plan by:

- a. Re-evaluating and revising the case management plan when the member transfers to another facility, transfers to a hospital, has a change in level of care; and
 - b. Monitoring receipt of services by a member;
5. Assist the member to maintain or progress toward the highest level of functioning;
 6. Ensure that records are transferred when the member is transferred from a facility or provider to a new facility or provider;
 7. Perform additional monitoring of a member with rehabilitation potential and whose condition is fragile or unstable, whose case management plan is marginally cost effective, or whose use of medical and hospital services is unusual;
 8. Arrange behavioral health services, if necessary. The case manager shall have initial and quarterly consultation and collaboration with a behavioral health professional to review the treatment plan, unless the case manager meets the definition of a behavioral health professional under A.A.C. R9-20-101.
- C.** A program contractor shall submit a service plan and other information related to the case management plan upon request to the Administration