

**NOTICE OF FINAL RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**

**CHILDREN'S HEALTH INSURANCE PROGRAM**

**PREAMBLE**

<b><u>1. Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action:</u></b>
R9-31-1201	Amend
R9-31-1202	Repeal
R9-31-1203	Repeal
R9-31-1204	Repeal
R9-31-1205	Repeal
R9-31-1206	Repeal
R9-31-1207	Repeal

**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(F)

Implementing statute: A.R.S. §§ 36-2903.01(F), 36-2907, 36-2907(F) and Laws 2013, First Special Session, Chapter 10, §13.

**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 Rulemaking Docket Opening: 20 A.A.R. 2184, August 15, 2014

Notice of Proposed Rulemaking: 20 A.A.R. 2178, August 15, 2014

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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

HB 2634 (Law 2011, Chapter 96) requires the Arizona Department of Health Services (ADHS) to reduce monetary or regulatory costs on persons or individuals receiving behavioral health services, streamline the regulation process, and facilitate licensure of integrated health programs that provide both behavioral and physical health services.

The Administration cross references ADHS rules and must update its rules to correctly reference changes made by ADHS. In addition, changes recommended during a 5 year review, report effective November 3, 2009, of these rules have also been made along with any technical changes required to make the rulemaking clear. R9-31-1201 – R9-31-1207 The Administration modified and repealed these sections since a cross-reference was made under R9-31-1201 that all the provisions described under Chapter 22 apply to members covered under this Chapter. Specific recommended changes to subsections were not made since the sections were repealed.

**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.

**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 Administration anticipates minimal economic impact on the implementing agency, small businesses and consumers; because this rulemaking was made for clarification and technical changes required as a result of ADHS rule changes. The changes made in this proposed rulemaking are not substantive changes.

**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. The changes that were made were as a result of recommendations made by GRRC staff.

**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 on September 15, 2014.

**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:**

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**TITLE 9. HEALTH SERVICES**

**CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**

**CHILDREN'S HEALTH INSURANCE PROGRAM**

**ARTICLE 12. BEHAVIORAL HEALTH SERVICES**

Section

R9-31-1201. ~~General Requirements~~

R9-31-1202. ~~ADHS and Contractor Responsibilities~~ Repeal

R9-31-1203. ~~Eligibility for Covered Services~~ Repeal

R9-31-1204. ~~General Service Requirements~~ Repeal

R9-31-1205. ~~Scope of Behavioral Health Services~~ Repeal

R9-31-1206. ~~General Provisions and Standards for Service Providers~~ Repeal

R9-31-1207. ~~General Provisions for Payment~~ Repeal

## ARTICLE 12. BEHAVIORAL HEALTH SERVICES

### **R9-31-1201. General Requirements**

~~General requirements. The following general requirements, services and definitions under Chapter 22, Article 2 and Article 12 apply to behavioral health services provided under this Article, subject to all exclusions and limitations:~~

- ~~1. Administration. The program shall be administered as specified in A.R.S. § 36-2982.~~
- ~~2. Provision of services. Behavioral health services shall be provided as specified in A.R.S. § 36-2989 and this Chapter.~~
- ~~3. Definitions. The following definitions apply to this Article:~~
  - ~~a. "Agency" for the purposes of this Article, means the same as in A.A.C. R9-22-1201.~~
  - ~~b. "Behavior management services" means the same as in A.A.C. R9-22-1201.~~
  - ~~c. "Behavioral health adult therapeutic home" means the same as in A.A.C. R9-22-1201.~~
  - ~~d. "Behavioral health therapeutic home care services" means the same as in A.A.C. R9-22-1201.~~
  - ~~e. "Behavioral health evaluation" means the same as in A.A.C. R9-22-1201.~~
  - ~~f. "Behavioral health medical practitioner" means the same as in A.A.C. R9-22-1201.~~
  - ~~g. "Behavioral health professional" means the same as in A.A.C. R9-20-101.~~
  - ~~h. "Behavioral health service" means the same as in A.A.C. R9-22-1201.~~
  - ~~i. "Behavioral health technician" means the same as in A.A.C. R9-22-1201.~~
  - ~~j. "Certified psychiatric nurse practitioner" means the same as in A.A.C. R9-22-1201.~~
  - ~~k. "Client" means the same as in A.A.C. R9-22-1201.~~
  - ~~l. "Cost avoid" means the same as in A.A.C. R9-22-1201.~~
  - ~~m. "Health care practitioner" means the same as in A.A.C. R9-22-1201.~~
  - ~~n. "Licensee" means the same as in A.A.C. R9-22-1201.~~
  - ~~o. "OBHL" means the same as in A.A.C. R9-20-101.~~
  - ~~p. "Partial care" means the same as in A.A.C. R9-22-1201.~~
  - ~~q. "Physician assistant" means the same as in A.A.C. R9-22-1201.~~

- r. ~~“Psychiatrist” means the same as in A.A.C. R9-22-1201.~~
- s. ~~“Psychologist” means the same as in A.A.C. R9-22-1201.~~
- t. ~~“Qualified behavioral health service provider” means the same as in A.A.C. R9-22-1201.~~
- u. ~~“Residual functional deficit” means the same as in A.A.C. R9-22-1201.~~
- v. ~~“Respite” means the same as in A.A.C. R9-22-1201.~~
- w. ~~“Substance abuse” means the same as in A.A.C. R9-22-102.~~
- x. ~~“TRBHA” or “Tribal Regional Behavioral Health Authority” means the same as in A.A.C. R9-22-1201.~~

**R9-31-1202. ADHS and Contractor Responsibilities Repeal**

- ~~A. ADHS responsibilities. Behavioral health services shall be provided by a RBHA through a contract with ADHS/DBHS. ADHS/DBHS shall contract with a RBHA for the provision of behavioral health services in R9-22-1205 for all Title XXI members as specified in A.R.S. § 36-2989. ADHS/DBHS, the RBHA’s, TRBHA’s or subcontractors shall provide behavioral health services to Title XXI members in accordance with R9-22-1202.~~
- ~~B. ADHS/DBHS may contract with a TRBHA for the provision of covered behavioral health services for Native American members. Native American members may receive covered behavioral health services:
 
  - 1. From an IHS facility,
  - 2. From a TRBHA, or
  - 3. From a RBHA when referred off reservation.~~
- ~~C. ADHS/DBHS, the RBHA’s, TRBHA’s, subcontractors of ADHS/DBHS, and AHCCCS acute care contractors shall cooperate as specified in contract when a transition from one entity to another becomes necessary.~~

**R9-31-1203. Eligibility for Covered Services Repeal**

- ~~A. Eligibility for covered services. A member determined eligible under A.R.S. § 36-2981 shall receive medically necessary covered services specified in R9-22-1205.~~
- ~~B. Limitations. Behavioral health services are covered as specified in R9-22-201 and R9-22-1205.~~

**R9-31-1204. General Service Requirements Repeal**

- ~~A. Services. Behavioral health services include both mental health and substance abuse services.~~

- B. Medical necessity.** A service shall be medically necessary as under R9-31-201.
- C. Prior authorization.** A provider shall comply with the prior authorization requirements of the contractor and the following:
1. ~~Emergency behavioral health services. A provider is not required to obtain prior authorization for emergency behavioral health services.~~
  2. ~~Non-emergency behavioral health services. When a member's behavioral health condition is determined not to require emergency behavioral health services, the provider shall follow the prior authorization requirements of a contractor.~~
- D. Experimental services.** Experimental services and services that are provided primarily for the purpose of research are not covered.
- E. Gratuities.** A service or an item, if furnished gratuitously to a member, is not covered and payment to a provider shall be denied.
- F. GSA.** Behavioral health services rendered to a member shall be provided within the RBHA's GSA except when:
1. A contractor's primary care provider refers a member to another area for medical specialty care,
  2. A member's medically necessary covered service is not available within the GSA, or
  3. A net savings in behavioral health service delivery costs can be documented by the RBHA for a member. Undue travel time or hardship shall be considered for a member or a member's family.
- G. Travel.** If a member travels or temporarily resides outside of a behavioral health service area, covered services are restricted to emergency behavioral health care, unless otherwise authorized by a member's RBHA.
- H. Non-covered services.** If a member requests a behavioral health service that is not covered by Title XXI or is not authorized by a RBHA or TRBHA, the behavioral health service may be provided by an AHCCCS registered behavioral health service provider under the provisions of R9-22-702.
- I. Referral.** If a member is referred outside of a RBHA or TRBHA GSA to receive authorized medically necessary behavioral health services, the RBHA or TRBHA is responsible for reimbursement, if the claim is otherwise payable under these rules.
- J. Restrictions and limitations.**

1. ~~The restrictions, limitations, and exclusions in this Article do not apply to a contractor, ADHS/DBHS, or a RBHA when electing to provide a noncovered service.~~
2. ~~Room and board is not a covered service unless provided in an inpatient, Level 1, sub-acute, or residential facility under R9-22-1205.~~

**R9-31-1205. Scope of Behavioral Health Services Repeal**

~~The provisions of R9-22-1205 apply to the scope and coverage of behavioral health services under this Article, but an applicant or member is not eligible to receive covered behavioral health services if in an IMD at the time of application or at the time of redetermination.~~

**R9-31-1206. General Provisions and Standards for Service Providers Repeal**

- A. ~~The provisions of R9-22-1206 apply to the general provisions and standards for a behavioral health service provider under this Article.~~
- B. ~~A qualified behavioral service provider shall comply with all requirements under Article 5 of this Chapter and this Article.~~

**R9-31-1207. General Provisions for Payment Repeal**

- A. ~~Payment to ADHS/DBHS. The Administration shall make a monthly capitation payment to ADHS/DBHS based on the number of acute care members at the beginning of each month. ADHS/DBHS' administrative costs shall be incorporated into the capitation payment.~~
- B. ~~Claims submissions.~~
  1. ~~ADHS/DBHS shall require all service providers to submit clean claims no later than the time frame specified in ADHS/DBHS' contract with the Administration.~~
  2. ~~Behavioral health service providers shall submit claims according to the payment provisions in A.A.C. R9-22-1207.~~
- C. ~~Prior authorization. Payment to a provider for behavioral health services or items requiring prior authorization may be denied if a provider does not obtain prior authorization from a RBHA, ADHS/DBHS, a TRBHA, or a contractor.~~