

NOTICE OF FINAL 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:

ARTICLE 4.	New Article
R9-22-401	New Section
R9-22-402	New Section
R9-22-403	New Section
R9-22-404	New Section
R9-22-405	New Section
R9-22-406	New Section
R9-22-407	New Section
R9-22-408	New Section

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

Authorizing statutes: A.R.S. § 36-2903.01(F)

Implementing statutes: A.R.S. § 36-2905.04; A.R.S. § 36-2991

3. The effective date of the rule:

The agency selected an immediate effective date upon 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 as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening: 22 A.A.R. 1293, May 20, 2016

Notice of Proposed Rulemaking: 22 A.A.R. 1289, May 20, 2016

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

Name: James Maguire
Address: AHCCCS
Office of Administrative Legal Services
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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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

A.R.S. §§ 36-2905.04 and 36-2991 provide for the control and deterrence of fraud relating to AHCCCS eligibility, including the Hospital Presumptive Eligibility (HPE) program, through the discretionary imposition of a civil penalty on those persons who obtain AHCCCS eligibility through fraudulent means. A.R.S. §§ 36-2905.04(E) and 36-2991(E) require the AHCCCS Director to adopt rules providing for the appeal of a decision to impose such a penalty. The Administration will promulgate rules necessary for the imposition and appeal of penalties resulting from eligibility fraud, including fraud associated with the HPE program.

7. 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 adding these regulations as A.R.S. §§ 36-2905.04(E) and 36-2991(E) require AHCCCS to promulgate these rules.

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 a minimal economic impact on the implementing agency, small businesses and consumers. AHCCCS currently pursues civil remedies against those who obtain AHCCCS eligibility through fraudulent means; therefore, AHCCCS does not anticipate that adding these regulations to its recovery efforts will have more than a minimal economic impact.

In SFY 2015, the AHCCCS Member Compliance section, through prosecutions and repayment agreements, recovered \$812,124.14 in money from persons who obtained eligibility through fraudulent means. In addition, the unit saved \$840,008.24 by discontinuing the eligibility of persons who were deemed ineligible due to non-residency in Arizona, unreported income, impermissible transference of resources and other misrepresentations.

The Administration anticipates an increase of 10% to 25% above the existing recovery amounts within the next fiscal year as a result of this rulemaking, which represents a potentially positive economic impact for the implementing agency.

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

No 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:

No comments were received.

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:

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:

The following federal law applies to the subject of this rulemaking:

42 C.F.R. Part 455 requires AHCCCS to maintain a fraud detection and investigation program to maintain the integrity of the Arizona Health Care Cost Containment System.

This rulemaking is not more stringent than, or prohibited by, 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:

No analysis was submitted.

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 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

ADMINISTRATION

ARTICLE 4. ~~REPEALED~~ PENALTY FOR OBTAINING ELIGIBILITY BY FRAUD

Section

R9-22-401. ~~Repealed~~ Definitions

R9-22-402. ~~Repealed~~ Determining the Amount of the Penalty

R9-22-403. ~~Repealed~~ Mitigating and Aggravating Circumstances

R9-22-404. ~~Repealed~~ Notice of Intent

R9-22-405. ~~Repealed~~ Failure to Respond to the Notice of Intent

R9-22-406. Request for State Fair Hearing

R9-22-407. Burden of Proof

R9-22-408. Rescission of the Notice of Intent

ARTICLE 4. REPEALED PENALTY FOR OBTAINING ELIGIBILITY BY FRAUD

R9-22-401. Repealed Definitions

Definitions. The following definitions apply specifically to terms used within this Article:

“Amounts incurred by the system” include capitation payments, costs incurred by any contractor in excess of capitation, reinsurance, and other administrative, legal or investigative costs associated with a person who obtained eligibility contrary to A.R.S. §§ 36-2905.04 and/or A.R.S. § 36-2991.

“Application for eligibility” means any request for benefits administered by AHCCCS under the authority of A.R.S. Title 36, Chapter 29, including applications for presumptive eligibility submitted to hospitals as described under Article 16 of this Chapter.

“Penalty” means an amount not to exceed the amounts incurred by the system during any time period that the person would have been ineligible for benefits but for the false or fraudulent information provided on the application for eligibility. A penalty does not include, and does not need to be reduced by, the amount of any overpayments that AHCCCS may be entitled to recoup from a person who violated A.R.S. § 36-2905.04 and/or A.R.S. § 36-2991.

R9-22-402. Repealed Determining the Amount of the Penalty

- A.** AHCCCS shall determine the amount of a penalty according to A.R.S. § 36-2905.04(B) or A.R.S. § 36-2991(B), whichever is applicable, and this Article.
- B.** In addition to any penalty imposed pursuant to ARS §§ 36-2905.04 or 36-2991, and this Article, the Administration may also recoup from the person the amounts incurred by the system as a part of the notice and appeal process described in this Article.

R9-22-403. Repealed Mitigating and Aggravating Circumstances

- A.** AHCCCS shall consider any of the following to be mitigating circumstances when determining the amount of a penalty for obtaining eligibility by fraud.
 - 1.** Degree of culpability. The degree of culpability of a person is a mitigating circumstance if the person did not intend to provide or cause to be provided false information on the

application for eligibility but was negligent as to the truthfulness of the information provided.

2. Prior Offenses. At the time of the submittal of the application the person:
 - a. Did not have any prior criminal convictions; and
 - b. Had not been held civilly liable for defrauding a public assistance program.
3. Financial condition. The financial condition of a person who violates A.R.S. §§ 36-2905.04 or 36-2991 is a mitigating circumstance if the imposition of a penalty without reduction will render the person incapable of obtaining necessities of life such as food, clothing, and shelter. AHCCCS may consider the resources available to the person when determining the amount of the penalty.
4. Other matters as justice may require. AHCCCS shall take into account other circumstances of a mitigating nature, if in the interest of justice; the circumstances require a reduction of the penalty.

B. AHCCCS shall consider any of the following to be aggravating circumstances when determining the amount of a penalty for obtaining eligibility by fraud.

1. Degree of culpability. The degree of culpability of a person who provides or causes to be provided false information on the application for eligibility is an aggravating circumstance if the person knows or had reason to know that the information provided on the application for eligibility was false, or the person failed to correct the false information prior to AHCCCS incurring a financial loss as a result of the application for eligibility.
2. Prior offenses. At any time before the submittal of the application for eligibility, the person was held criminally or civilly liable for committing any fraud, waste, or abuse against any public assistance program.
3. Financial Loss. The person's violation of A.R.S. §§ 36-2905.04 or 36-2991 caused a loss to the system equal to or exceeding \$5,000.00.
4. Other matters as justice may require. AHCCCS shall take into account other circumstances of an aggravating nature, if in the interest of justice; the circumstances require an increase of the penalty.

R9-22-404. Repealed-Notice of Intent

A. If AHCCCS imposes a penalty pursuant to this Article, AHCCCS shall hand deliver or send by certified mail, return receipt requested, or Federal Express to the person, a written Notice of Intent to impose a penalty.

B. The Notice of Intent shall include:

1. The legal and factual basis for AHCCCS' determination that there has been a violation of A.R.S §§ 36-2905.04 and/or 36-2991;
2. The penalty;
3. The amounts incurred by the system as a result of the violation of A.R.S. §§ 36-2905.04 and/or 36-2991, if AHCCCS intends to recoup those amounts through this process; and
4. The procedure for requesting a State Fair Hearing.

R9-22-405. Repealed-Failure to Respond to the Notice of Intent

If a person fails to respond to the Notice of Intent within the timeframe described in A.A.C. § R9-22-406(A), AHCCCS shall uphold the penalty and recoupment amounts described in the Notice of Intent.

R9-22-406. Request for State Fair Hearing

A. To dispute the agency action described in the Notice of Intent, the person shall file a written Request for State Fair Hearing with AHCCCS within sixty (60) days from the date of receipt of the Notice of Intent.

B. If AHCCCS receives a timely request for a State Fair Hearing from the person, AHCCCS shall mail a Notice of Hearing pursuant to the Uniform Administrative Hearing Procedures described in A.R.S. Title 41, Chapter 6, Article 10.

C. AHCCCS shall accept a written request for withdrawal of a hearing request if the written request for withdrawal is received from the person before AHCCCS mails a Notice of Hearing under the Uniform Administrative Hearing Procedures described in A.R.S. Title 41, Chapter 6, Article 10.

R9-22-407. Burden of Proof

- A. In any State Fair Hearing conducted under this Article, AHCCCS shall prove a violation of A.R.S. §§ 36-2905.04 and/or 36-2991, and any aggravating circumstances by a preponderance of the evidence.
- B. AHCCCS does not have to prove any specific intent to defraud.
- C. A person shall bear the burden of producing and proving by a preponderance of the evidence any affirmative defense or any circumstance that would justify reducing the amount of the penalty.

R9-22-408. Rescission of the Notice of Intent

AHCCCS may rescind the Notice of Intent at any time prior to the State Fair Hearing without prejudice.