

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

ADMINISTRATION – ARIZONA LONG TERM CARE SYSTEM

PREAMBLE

1. Article, Part, or Section Affected (as applicable)

R9-28-703

Rulemaking Action:

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

Implementing statutes: A.R.S. §§ 36-2999.51, 36-2999.52, 36-2999.53, 36-2999.54, 36-2999.55, 36-2999.56, 36-2999.57

3. The effective date of the rule:

An immediate effective date is requested under A.R.S. § 41-1032(A)(2) to avoid a violation of federal regulation. The effective date was chosen to comport with the new regulations in 42 CFR 438.6.

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: 23 A.A.R. 2762, October 6, 2017

Notice of Proposed Rulemaking 23 A.A.R. 2738, October 6, 2017

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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking: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 proposed rulemaking is imperative to ensure that the pass-through payments made to AHCCCS managed care contractors comport with recent changes to federal law which limits the aggregate amount of permissible pass-through payment made by the State. Failure to proceed with the proposed rulemaking to align with federal law could result in a federal compliance action and the potential loss of federal funding. Additionally, calculation of nursing facility supplemental payments using the current rule could result in the termination of reduction of supplemental payments, depriving nursing facility providers of critical revenues.

The proposed rulemaking will amend the current rule to authorize two separate funding allocations for purposes of calculating nursing facility supplemental payments to be paid to providers by spring 2018 consistent with federal law. Technical and clarifying changes to rules may also be proposed for greater clarity and understandability.

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 these 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 rule will support economic development in Arizona, and it will promote the fiscal health of nursing facility providers by funding a larger portion of the costs related to care delivery. By continuing to make available increased supplemental payments to nursing facilities, the proposed rulemaking will also enhance the ability of nursing facilities to provide higher quality yet cost-effective care to AHCCCS members who receive nursing facility services. The supplemental payments to nursing facilities foster economic growth within the State. The proposed rulemaking will promote health care delivery, innovation, and economic development in Arizona. The proposed rulemaking will reduce the regulatory burden upon stakeholders by continuing the availability of increased payments to nursing facilities.

In addition, even though the distribution of supplemental payments will be done differently, the rulemaking will have no impact on small businesses since the amount they will receive in supplemental payments will not change.

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

There were no changes made between the proposed and final rulemaking.

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

Only one member of the public came to the oral proceeding in person and provided further positive comments.

Item #	Comment From and Date rec’d.	Comment	Analysis/ Recommendation
1.	Kathleen Collins-Pagels 11/07/17 Executive Director of the AZHCA	<p>I would like to go on record to express my support for the rule revision for the skilled nursing facility (SNF) provider assessment. The Arizona Health Care Association, representing the vast majority of skilled nursing facilities state wide, is pleased to collaborate with AHCCCS on this rule revision. We believe this revision is a critical step in complying with the new CMS managed care rules. We understand that the proposed rulemaking will amend the current rule to authorize two separate funding allocations for purposes of calculating nursing facility supplemental payments to be paid to providers by the spring of 2018 consistent with federal law.</p> <p>We pledge our continued support as we receive further guidance from CMS in the revision of the SNF provider assessment.</p> <p>Thank you for this opportunity to offer public comment.</p>	AHCCCS thanks Ms. Collins-Pagels for the support.

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 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:

The rules need to align with the new Managed Care Regulations in 42 CFR 438.6.

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:

Not applicable.

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
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ARTICLE 7. STANDARDS FOR PAYMENTS

Section

R9-28-703. Nursing Facility Supplemental Payments

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-28-703. Nursing Facility Supplemental Payments

A. ~~Nursing Facility Supplemental Payments~~

- ~~1. Using Medicaid resident bed day information from the most recent and complete twelve months of adjudicated claims and encounter data, for every combination of contractor and every facility eligible for a supplemental payment, the Administration shall determine annually a ratio equal to the number of bed days for the facility paid by each contractor divided by the total number of bed days paid to all facilities by all contractors and the Administration.~~
- ~~2. Using the same information as used in (A)(1), for every facility eligible for a supplemental payment, the Administration shall determine annually a ratio equal to the number of bed days for the facility paid by the Administration divided by the total number of bed days paid to all facilities by all contractors and the Administration.~~
- ~~3. Quarterly, each contractor shall make payments to each facility in an amount equal to 98% of the amounts identified as Nursing Facility Enhanced Payments in the 820 transaction sent from AHCCCS to the contractor for the quarter multiplied by the percentage determined in subsection (A)(1) applicable to the contractor and to each facility.~~
- ~~4. Quarterly, the Administration shall make payments to each facility in an amount equal to 99% of the amounts collected during the preceding quarter under R9-28-702, less amounts collected and used to fund the Nursing Facility Enhanced Payments included in the capitation paid to contractors and the corresponding federal financial participation, multiplied by the percentage determined in subsection (A)(2) applicable to the Administration and to each facility. The Administration shall make the supplemental payments to the nursing facilities within 20 calendar days of the determination of the quarterly supplemental payment.~~
- ~~5. Neither the Administration nor its contractors shall be required to make quarterly payments to facilities otherwise required by subsections (A)(3) or (A)(4) until the amount available in the nursing facility assessment fund established by A.R.S. § 36-2999.53, plus the corresponding federal financial participation, is equal to or greater than 101% of the amount necessary to make such payments in full.~~
- ~~6. Contractors shall not be required to make quarterly payments to a facility otherwise required by subsection (A)(3) until the Administration has made a retroactive adjustment to the capitation rates paid to contractors to correct the Nursing Facility Enhanced Payments based on actual member months for the specified quarter.~~

~~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 20 calendar days from receipt of the funds.~~

~~C. After each assessment year, the Administration shall reconcile the payments made by contractors under subsections (A)(3) 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)(1) 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. 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.~~

~~E. The Arizona Veterans' Homes are not eligible for supplemental payments.~~

A. Determination of amounts available for payment.

1. Using Medicaid resident bed day information from the most recent and complete twelve months of paid claim and adjudicated encounter data, for every facility eligible for a supplemental payment, the Administration shall determine annually;
 - a. A ratio equal to the number of bed days paid by the Administration's contractors divided by the total number of bed days paid, and
 - b. A ratio equal to the number of bed days paid by the Administration divided by the total number of bed days paid.
2. The Administration shall determine quarterly the amount available in the nursing facility assessment fund established by A.R.S. § 36-2999.53 plus the corresponding federal financial participation and divide the total amount as follows:
 - a. The total amount multiplied by the ratio determined in subsection (A)(1)(a) shall be distributed according to subsection B.
 - b. The total amount multiplied by the ratio determined in subsection (A)(1)(b) shall be distributed according to subsection C.

B. Payments to facilities by contractors.

1. The Administration shall distribute quarterly to its contractors an amount equal to the total amount of Nursing Facility Enhanced Payments made by the Administration's contractors for the period of October 1, 2015 through September 30, 2016 divided by 4, which shall be paid to eligible facilities as follows:

- a. Using the adjudicated encounter data described in subsection (A)(1), the Administration shall determine annually for each facility a ratio equal to the number of bed days for the facility paid by each contractor divided by the total number of bed days paid to all facilities by all contractors.
 - b. Each contractor shall make payments quarterly to each facility in an amount equal to 98% of the amounts identified as Nursing Facility Enhanced Payments in the 820 transaction sent by the Administration to the contractor for the quarter multiplied by the ratio determined in subsection (B)(1)(a) applicable to the contractor and to each facility. In the event the Administration does not produce an 820 transaction, each contractor shall distribute quarterly an amount equal to 98% of the payment received from AHCCCS for Nursing Facility Enhanced Payments.
 - c. Contractors shall not be required to make quarterly payments to a facility until the Administration has made a retroactive adjustment to the capitation rates paid to contractors to correct the Nursing Facility Enhanced Payments based on actual member months for the specified quarter.
 - d. Beginning October 1, 2018, any amounts that would otherwise have been distributed under subsection (B)(1) shall be distributed under subsection (B)(2).
2. Subject to annual approval by CMS in accordance with 42 CFR § 438.6(c), the Administration shall distribute quarterly to its contractors an amount equal to the amount determined in subsection (A)(2)(a) minus the amount distributed under subsection (B)(1), which shall be paid to eligible facilities as follows:
 - a. Using the Medicaid resident bed day information described by subsection (A)(1), the Administration shall determine quarterly a per bed day enhanced support uniform increase by dividing the quarterly distribution amount by one fourth of the total resident bed days paid by the Administration's contractors. Using the same Medicaid resident bed day information, the Administration shall determine the quarterly bed days paid to each facility by each contractor by summing the total bed days paid to each facility by each contractor and dividing by 4.
 - b. The Administration shall communicate to the contractors quarterly the per bed day enhanced support uniform increase and the quarterly bed days paid to each facility by the contractor.
 - c. Each contractor shall distribute quarterly an amount equal to 98% of the payment received from AHCCCS, to be paid to each facility in an amount equal to the per bed day enhanced support uniform increase multiplied by the number of bed days paid by the contractor to the facility.
 3. Each contractor must pay each eligible facility the amounts required under subsections (B)(1) and (B)(2) 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 20 calendar days from receipt of the funds.
- C. Payments to facilities by the Administration.
1. Using the paid claim data described in subsection (A)(1), the Administration shall determine annually for each facility a ratio equal to the number of bed days for the facility paid by the Administration divided by the total number of bed days paid to all facilities by the Administration.

2. The Administration shall make payments quarterly to each eligible facility in an amount equal to 99% of the amount determined in subsection (A)(2)(b) multiplied by the ratio determined in subsection (C)(1) applicable to the facility.
 3. The Administration shall make the supplemental payments to the eligible facilities within 20 calendar days of determining the amounts required under subsection (C)(2).
- D. Assurance of sufficient funds for payments. Neither the Administration nor its contractors shall be required to make quarterly payments to facilities otherwise required by subsections (B) and (C) until the amount available in the nursing facility assessment fund established by A.R.S. § 36-2999.53, plus the corresponding federal financial participation, is equal to or greater than 101% of the amount necessary to make such payments in full.
- 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 claim 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.
 5. The Arizona State Veterans' Homes are not eligible for supplemental payments.