

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 9. HEALTH SERVICES**

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

**PREAMBLE**

**1. Permission to proceed with this proposed rulemaking was granted under A.R.S. § 41-1039 by the governor on:**

November 19, 2024

**2. Article, Part, or Section Affected (as applicable)**

**Rulemaking Action**

R9-28-910

Amend

R9-28-911

Amend

R9-28-912

Amend

**3. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. § 36-2932

Implementing statute: A.R.S. § 36-2915, 36-2916, 36-2935, 36-2956

**4. Citations to all related notices published in the Register that pertain to the current record of the proposed rule:**

Notice of Rulemaking Docket Opening: (volume #) A.A.R. (page #), Issue Date: (date published), Issue Number: (number), File number: (R2#-###)

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

Name: Sladjana Kuzmanovic

Title: Rules Analyst

Division: AHCCCS Office of the General Counsel

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Website: www.azahcccs.gov

**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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**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 rules in Title 9, Chapter 28, Article 9 support the operations and practices of the third-party liability recovery programs for members enrolled in the Arizona Long Term Care System (ALTCS). The rules in this Article also support the operations and practices of the estate recovery program, which applies to the estates of members who were enrolled in ALTCS and meet estate recovery criteria. The ALTCS program is authorized by Title XIX of the Social Security Act. This program is a federal- and state-funded program for aged (65 and over), blind, or disabled individuals who need ongoing services at a nursing facility level of care. However, program participants do not have to reside in a nursing home. Many ALTCS participants live in their own homes or in

an assisted living facility where they receive home and community based (HCBS) services. ALTCS participants also receive covered acute care services, including doctor's office visits, hospitalization, prescriptions, lab work, and behavioral health services.

The proposed rulemaking aims to implement changes that will further clarify and streamline these rules, making these rules more accessible and easier to comprehend. Proposed changes include removing that AHCCCS shall recover Medicare Parts A and B premium payments, coinsurance and deductibles funds paid by AHCCCS, which were paid before or after the death of a member for ALTCS benefits. Proposed changes further include removing the reference to "Arizona Department of Revenue or County Assessor's Office," because the Administration could consider a property that is out of state as well and the Department of Revenue or County Assessor would not have this information. Finally, adding a compromise factor to partial recovery rule clarifying that AHCCCS will take into consideration any other factors relevant to a fair decision in a particular case when determining whether to seek a partial recovery. These changes were approved by GRRC in a prior 5YRR.

**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:**

The Administration did not review or rely on any study for this rulemaking.

**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. The preliminary summary of the economic, small business, and consumer impact:**

The revisions in this proposed rulemaking clarify the existing practice which is consistent with federal law. The small businesses, consumers, members, and providers are anticipated to experience nominal impact by the changes to the rule language since the outcome is expected to be budget neutral. It is anticipated that the private sector, including small businesses or political subdivisions, will be nominally impacted since the proposed rule language streamlines and clarifies the existing rules, including rules delineating the reimbursement process of certain third-party liability claims. The Administration, contractors, and providers will benefit because the changes provide clarification of when AHCCCS shall not seek to recover funds, and expand what AHCCCS will take into consideration when determining to seek partial recovery. The promulgated rules represent the most cost-effective method of fulfilling AHCCCS' responsibilities while complying with applicable federal regulations.

**10. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:**

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**11. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Written comments about this proposed rulemaking will be accepted in person at the address provided under Item #5, Monday through Friday from 8 a.m. to 5 p.m. except for state holidays. Comments will also be accepted via email at the email address provided under Item #5. Mailed written comments shall be postmarked within 30 days of this published notice.

An oral proceeding is scheduled on this proposed rulemaking.

Date: February 10, 2025

Time: 2:00 p.m.

Location: (meet.google.com/gvs-caej-kfb)

Nature: Public Hearing

Public comment period ends: February 10, 2025 at 5:00 p.m.

Close of record: February 10, 2025 at 5:00 p.m.

**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:**

There are not other matters prescribed by statute applicable specifically to the Administration or this specific rulemaking.

**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:**

The rule does not require the issuance of a regulatory permit. Therefore, a general permit is 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 are 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 rules:**

Not applicable.

**14. 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 9. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES**

**Section**

- R9-28-910. Recoveries
- R9-28-911. Estate Recovery and Undue Hardship
- R9-28-912. Partial Recovery

## ARTICLE 9. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

### R9-28-910. RECOVERIES

AHCCCS shall recover funds paid before or after the death of a member for ALTCS benefits including: capitation payments, ~~Medicare-Parts A and B premium payments, coinsurance and deductibles paid by AHCCCS,~~ fee-for-service payments, and reinsurance payments from:

1. The estate of a member who was 55 years of age or older when the member received benefits; or
2. The estate or the property of a member under A.R.S. §§ 36-2935, 36-2956, and 42 U.S.C. 1396p.

### R9-28-911. ESTATE RECOVERY AND UNDUE HARDSHIP

- A. Any recovery of a claim by AHCCCS against a member's estate shall be made only after the death of the member's surviving spouse and only at a time:
1. When there exists no surviving minor child under age 21; and
  2. When there exists no surviving child who receives benefits under either Title II or Title XVI of the Social Security Act because the child is blind or disabled as defined in 42 U.S.C. 1382c.
- B. Undue hardship exemption request. A member's representative may request an undue hardship exemption. If the member's representative wishes to request an undue hardship exemption, the member's representative shall submit the request within 30 days from the receipt of the notification of the AHCCCS claim against the estate. The member's representative shall submit a written statement to AHCCCS describing the factual basis for a claim that the property should be exempt from estate recovery as provided under this Section. AHCCCS shall respond to the member or member's representative in writing within 30 days of receiving an undue hardship exemption request, unless the parties mutually agree to a longer period of time.
- C. AHCCCS shall waive a claim against a member's estate because of undue hardship if any of the following situations exist:
1. The estate consists only of real property that is listed as residential property ~~by the Arizona Department of Revenue or County Assessor's Office,~~ and the heir or devisee:
    - a. Owns a business that is located at the residential property and:
      - i. The business was in operation at the residential property for at least 12 months preceding the death of the member,
      - ii. The business provides more than 50 percent of the heir's or devisee's livelihood, and
      - iii. The recovery of the property would result in the heir or devisee losing the heir's or devisee's means of livelihood; or
    - b. Currently resides in the residence and:
      - i. Resided there at the time of the member's death,
      - ii. Made the residence his or her primary residence for the 12 months immediately before the death of the member, and
      - iii. Owns no other residence; or
  2. The estate consists only of personal property and:
    - a. The heir's or devisee's gross annual income for the household size is less than 100 percent of the Federal Poverty Level (FPL). New sources of income such as employment or Social Security that may not have yet been received are included in determining the household's annual gross income; and
    - b. The heir or devisee does not own a home, land, or other real property.

- D. When the estate consists of both personal property and real property that qualify for the undue hardship exemption criteria under subsections (B) and (C), AHCCCS shall not grant an undue hardship waiver; however, AHCCCS shall adjust its claim to the value of the personal property.
- E. AHCCCS shall exempt the following income, resources, and property of Native Americans (NA) and Alaska Natives (AN) from estate recovery:
1. Income and resources from tribal land and other resources currently held in trust and judgment funds from the Indian Claims Commission or U.S. Claims Court;
  2. Ownership interest in trust or non-trust property;
  3. Ownership interests left as a remainder in an estate in rents, leases, royalties, or usage rights related to natural resources;
  4. Any other ownership interests or rights in a property that has unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional life style according to applicable Tribal law or custom; and
  5. Income left as a remainder in an estate derived from any property listed in subsection (E)(1) through (4), that was either collected by a NA, or by a Tribe or Tribal organization and distributed to a NA.

**R9-28-912. PARTIAL RECOVERY**

AHCCCS shall use the following factors in determining whether to seek a partial recovery of funds when an heir or devisee does not meet the requirements of R9-28-911 and requests a partial recovery:

1. Financial and medical hardship to the heir or devisee;
2. Income of the heir or devisee and whether the heir or devisee's household gross annual income is less than 100 percent of the FPL;
3. Resources of the heir or devisee;
4. Value and type of assets;
5. Amount of AHCCCS' claim against the estate; ~~and~~
6. Whether other creditors have filed claims against the estate or have foreclosed on the property; and
7. Any other factors relevant for a fair and equitable determination under the circumstances of a particular case.