

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:

May 6, 2024

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

R9-28-401.01	Amend
R9-28-406	Amend
R9-28-413	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. §§ 36-2933, 36-2934 and 36-2934.01

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: Sr. Rules Analyst
Division: AHCCCS Office of the General Counsel
Address: 801 E. Jefferson Street, MD 6200, Phoenix, AZ 85034
Telephone: (602) 417-4232
Fax: (602) 253-9115
Email: AHCCCSRules@azahcccs.gov
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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking: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 R9-28-Article 4 outline Arizona Long Term Care System enrollment guidelines for ALTCS members including application guidelines, effective dates, resource and income criteria. Although effective, certain current rules do not align with some of the language in federal regulations or provide true clarity to members utilizing them in determining eligibility.

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 Administration does not anticipate any economic, small business, and consumer impact with the currently proposed changes. Proposed changes are merely clarifying including updating ALTCS eligibility office locations where applicant may withdraw application, clarification that inmate of a public institution may be eligible for the ALTCS program if federal financial participation is not available to them, and clarifying an acronym stated in a rule. Substantive and procedural rights of members are not affected, nor are any of the programs of the Administration.

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

Name: Sladjana Kuzmanovic
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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: December 16, 2024
Time: 2:00 p.m.
Location: (meet.google.com/nxt-gxth-gni)
Nature: Public Hearing
Public comment period ends: December 16, 2024 at 5:00 p.m.
Close of record: December 16, 2024 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 4. ELIGIBILITY AND ENROLLMENT

Section

- R9-28-401.01 General
- R9-28-406. ALTCS Living Arrangements
- R9-28-413. Enrollment with an Elderly and Physically Disabled (EPD) Program Contractor

ARTICLE 4. ELIGIBILITY AND ENROLLMENT

R9-28-401.01. GENERAL

- A.** Application for ALTCS coverage.
1. The Administration shall provide a person the opportunity to apply for ALTCS as described under Chapter 22, Article 3, unless specified otherwise in this Section.
 2. To apply for ALTCS, a person shall submit an application to an ALTCS eligibility office.
 - a. The application shall contain the applicant's name and address.
 - b. Before the application is approved, a person listed in A.A.C. R9-22-302(2) shall sign the application.
 - c. A witness shall also sign the application if an applicant signs the application with a mark.
 - d. The date of application is the date the application is received by the Administration or its designee as described in R9-22-302.
 3. Except as provided in R9-22-306, the Administration shall determine eligibility within 45 days from the date of application.
 4. An applicant or representative who files an ALTCS application may withdraw the application for ALTCS coverage either orally or in writing to ~~the any~~ ALTCS eligibility office ~~where the application was filed~~. The Administration shall provide the applicant with a denial notice under subsection (E).
 5. If an applicant dies while an application is pending, the Administration shall complete an eligibility determination for the deceased applicant.
 6. If a person dies before an application is filed, the Administration shall complete an eligibility determination on an application filed on behalf of the deceased applicant, if the application is filed in the month of the person's death.
- B.** Conditions of ALTCS eligibility. Except for persons identified in subsection (C), the Administration shall approve a person for ALTCS if all conditions of eligibility are met. The conditions of eligibility are:
1. Citizenship and alien status under Chapter 22, Article 3;
 2. SSN under Chapter 22, Article 3;
 3. Living arrangements under R9-28-406;
 4. Resources under R9-28-407;
 5. Income under R9-28-408;
 6. Transfers under R9-28-409;
 7. A legally authorized person shall assign rights to the Administration for medical support and for payment of medical care from any first- and third-parties as described under R9-22-311;
 8. A person shall take all necessary steps to obtain annuity, pension, retirement, and disability benefits for which a person may be entitled;
 9. State residency under R9-22-305;
 10. Medical eligibility as specified in Chapter 28, Article 3; and
 11. Providing information and verification as specified under Chapter 22, Article 3.
- C.** Persons eligible for Title IV-E or Title XVI are only required to meet the conditions under subsection (B)(6), (B)(10), (B)(11) and with respect to trusts, A.R.S. § 36-2934.01.
- D.** Eligibility effective date.

1. Eligibility is effective on the first day of the month that all eligibility requirements are met, including the period described under R9-22-303.
 2. The effective date of eligibility for an applicant who moves into Arizona is no sooner than the date Arizona residency is established.
 3. The effective date of eligibility for an inmate applying for medical coverage is the date the applicant no longer meets the definition of an inmate of a public institution.
- E. Notice.** The Administration shall send a person a notice of the decision regarding the person’s application. The notice shall include a statement of the action and an explanation of the person’s hearing rights as specified in 9 A.A.C. 34 and:
1. **Approval.** If the applicant meets all the eligibility requirements and conditions of eligibility of this Article, the Administration or its designee shall approve the application and provide the applicant with an approval notice. The approval notice shall contain:
 - a. The name of each approved applicant,
 - b. The effective date of eligibility for each approved applicant,
 - c. The amount of share of cost, and
 - d. The applicant’s right to appeal the decision.
 2. **Denial.** If an applicant fails to meet the eligibility requirements or conditions of eligibility of this Article, the Administration or its designee shall deny the application and provide the applicant with a denial notice. The denial notice shall contain:
 - a. The name of each ineligible applicant,
 - b. The specific reason why the applicant is ineligible,
 - c. The income and resource calculations for the applicant compared to the income or resource standards for eligibility when the reason for the denial is due to the applicant’s income or resources exceeding the applicable standard,
 - d. The legal citations supporting the reason for the ineligibility,
 - e. The location where the applicant can review the legal citations, and
 - f. The applicant’s right to appeal the decision and request a hearing.
- F. Confidentiality.** The Administration shall maintain the confidentiality of a person’s record under A.A.C. R9-22-512.

R9-28-406 ALTCS LIVING ARRANGEMENTS

- A. Long-term care living arrangements.** A person may be eligible for ALTCS services, under Article 2, while living in one of the following settings:
1. Institutional settings:
 - a. A Nursing Facility (NF) defined in 42 U.S.C. 1396r(a),
 - b. An Institution for Mental Diseases (IMD) for a person who is either under age 21 or age 65 or older,
 - c. An Intermediate Care Facility for the Mentally Retarded (ICF-MR) for a person with developmental disabilities,
 - d. A hospice (free-standing, hospital, or nursing facility subcontracted beds) defined in A.R.S. § 36-401; or
 2. Home and community-based services (HCBS) settings:
 - a. A person’s home defined in R9-28-101(B), or
 - b. Alternative HCBS settings defined in R9-28-101(B).
- B. ALTCS acute care living arrangements.**

1. A person applying for and otherwise entitled to receive ALTCS coverage shall receive only ALTCS acute care coverage if residing in one of the following living arrangements, settings, or locations:
 - a. A noncertified medical facility, or
 - b. A medical facility that is registered with AHCCCS but does not have a contract with an ALTCS program contractor, or
 - c. At home or in an alternative HCBS setting when the person refuses HCBS services, or
 - d. A licensed or certified HCBS facility that is not registered with AHCCCS.
2. Eligibility income limits.
 - a. For a person residing in a setting described in subsection (1)(a) or (1)(b), the gross income limit is 300 percent of the Federal Benefit Rate (FBR).
 - b. For a person residing in a setting described in subsection (1)(c) or (1)(d), the net income limit is 100 percent of the FBR.
- C. Inmate of a public institution. An inmate of a public institution ~~is not~~ may be eligible for the ALTCS program if federal financial participation (FFP) is not available as described under R9-22-310.

R9-28-413 ENROLLMENT WITH AN ELDERLY AND PHYSICALLY DISABLED (EPD) PROGRAM CONTRACTOR

- A. A member's enrollment with an EPD program contractor. The Administration shall enroll an ALTCS elderly or physically disabled member with an EPD program contractor assigned to that Geographic Service Area (GSA).
- B. New member makes a choice of an EPD program contractor. The Administration shall provide a new member an opportunity to choose an EPD program contractor, if an ALTCS member is elderly or physically disabled, and lives in a GSA served by more than one EPD program contractor.
- C. New member who makes no choice of an EPD program contractor. The Administration shall enroll an elderly or physically disabled new member that lives in a GSA with more than one EPD program contractor and who makes no choice of an EPD program contractor under the following:
 1. Criteria. The Administration will prioritize enrollment based on continuity of care and enroll a member with an EPD program contractor chosen under the following criteria, including but not limited to:
 - a. A member's living arrangement, and
 - b. A member's primary care practitioner.
 2. Algorithm. The Administration shall enroll a member through an algorithm as specified in contract, when a member has a choice of more than one EPD program contractor and the criteria in subsection (C)(1) does not apply.