NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

PREAMBLE

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

November 25, 2024

2.

Article, Part, or Section Affected (as applicable)	Rulemaking Action
R9-22-1201	Amend
R9-22-1202	Repeal
R9-22-1205	Amend
R9-22-1207	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. § 36-2903.01(F)

Implementing statute: A.R.S. § 36-2907

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

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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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking: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 rules outlined in Title 9, Chapter 22, Article 12 of the Arizona Administrative Code (A.A.C.) govern administration of behavioral health services to AHCCCS members, as well as eligibility for such coverage by AHCCCS. These rules cover essential elements such as definitions, roles, and responsibilities of AHCCCS and its contractors. Additionally, they detail eligibility standards, service requirements, the scope of covered services, and payment mechanisms to ensure the consistent and effective delivery of care. The rules aim to promote accountability and high-quality service provision while addressing the needs of eligible

individuals. Revisions to these rules are derived from a Five-Year Review Report filed with the Governor's Regulatory Review Council on September 27, 2024.

Complete proposed revisions include:

R9-22-1201 – updating "Behavioral Health Technician" and "Clinical oversight" definitions to refer to the Department of Health Services definitions.

R9-22-1201 - adding "Health Plan" definition to reflect AHCCCS Complete Care (ACC) transition of Regional Behavioral Health Authorities (RBHAs) to Managed Care Organizations (MCOs).

R9-22-1202 – repealing this rule as Division of Behavioral Health Services (DBHS) is no longer at Arizona Department of Health Services (ADHS), and these processes are further outlined in AHCCCS policy.

R9-22-1205(F)(1) – correcting A.A.C. citation reference.

R9-22-1205(G) - removing reference to "ADHS/DBHS" as Department of Behavioral Health Services (DBHS) is no longer at Arizona Department of Health Services (ADHS).

R9-22-1205(H)(1) – correcting A.A.C. citation reference as definition is not found in R9-10 as it currently reads.

R9-22-1205(H)(6) – removing reference to "RHBA."

R9-22-1207(A)(1) – replacing "RHBA" with "health plan."

R9-22-1207(A)(2) – replacing "RHBA" with "health plan."

R9-22-1207(A)(5) – replacing "RHBA" with "health plan."

R9-22-1207(A)(7) – removing reference to "ADHS/DBHS" as Department of Behavioral Health Services (DBHS) is no longer at Arizona Department of Health Services (ADHS).

R9-22-1207(B) – removing references to "RBHA" and "ADHS/DBHS."

These proposed changes are meant for clarifying purposes and do not impose any additional burdens or costs to regulated persons. Substantive and procedural rights of members are not affected, nor are any of the programs of the Administration.

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 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. These regulations govern administration of behavioral health services to AHCCCS members, as well as eligibility for such coverage by AHCCCS. There is no economic, small business or consumer financial impact beyond the existing cost of the agency operations. The changes suggested in this Five-Year Review Report are clarifying, therefore the impact on the economy remains the same.

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: March 17, 2025

Time: 2:00 p.m.

Location: (meet.google.com/mwb-zeuk-iey)

Nature: Public Hearing

Public comment period ends: March 17, 2025 at 5:00 p.m.

Close of record: March 17, 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 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

ARTICLE 12. BEHAVIORAL HEALTH SERVICES

Section

ARTICLE 12. BEHAVIORAL HEALTH SERVICES

R9-22-1201. Definitions

Definitions. The following definitions apply to this Article:

"Adult behavioral health therapeutic home" as defined in 9 A.A.C. 10, Article 1.

"Agency" for the purposes of this Article means a behavioral health facility, a classification of a health care institution, including a mental health treatment agency defined in A.R.S. § 36-501, that is licensed to provide behavioral health services according to A.R.S. Title 36, Chapter 4.

"Assessment" means an analysis of a patient's need for physical health services or behavioral health services to determine which services a health care institution will provide to the patient.

"Behavior management services" means services that assist the member in carrying out daily living tasks and other activities essential for living in the community, including personal care services.

"Behavioral health therapeutic home care services" means interactions that teach the client living, social, and communication skills to maximize the client's ability to live and participate in the community and to function independently, including assistance in the self-administration of medication and any ancillary services indicated by the client's treatment plan, as appropriate.

"Behavioral health services" means medical services, nursing services, health-related services, or ancillary services provided to an individual to address the individual's behavioral health issue.

"Behavioral health technician" means ~~an individual who is not a behavioral health professional who provides behavioral health services at or for a health care institution according to the health care institution's policies and procedures that:~~

~~If the behavioral health services were provided in a setting other than a licensed health care institution, the individual would be required to be licensed as a behavioral professional under A.R.S. Title 32, Chapter 33; and~~

~~Are provided with clinical oversight by a behavioral health professional.~~the same as defined in 9 A.A.C. 10, Article 1.

"Case management" for the purposes of this Article, means services and activities that enhance treatment, compliance, and effectiveness of treatment.

"Certified psychiatric nurse practitioner" means a registered nurse practitioner who meets the psychiatric specialty area requirements under A.A.C. R4-19-505(C).

"Clinical oversight" means as ~~described under 9 A.A.C. 10.~~ as defined in 9 A.A.C. 10, Article 1.

"Cost avoid" means to avoid payment of a third-party liability claim when the probable existence of third-party liability has been established under 42 CFR 433.139(b).

"Court-ordered evaluation" has the same meaning as "evaluation" in A.R.S. § 36-501.

"Court-ordered pre-petition screening" has the same meaning as "pre-petition screening" in A.R.S. § 36-501.

"Court-ordered treatment" means treatment provided according to A.R.S. Title 36, Chapter 5.

"Crisis services" means immediate and unscheduled behavioral health services provided to a patient to address an acute behavioral health issue affecting the patient.

"Direct supervision" has the same meaning as "supervision" in A.R.S. § 36-401.

"Emergency medical services provider" has the same meaning as in A.R.S. § 36-2201.

"Health care institution" has the same meaning as defined in A.R.S. § 36-401.

"Health care practitioner" means a:

Physician;

Physician assistant;

Nurse practitioner; or

Other individual licensed and authorized by law to use and prescribe medication and devices, as defined in A.R.S. § 32-1901.

"Health Plan" means any Regional Behavioral Health Agreement (RBHA) plan, health authority, managed care organization plan, or state agency responsible for the coordination and the delivery of behavioral health services to clients.

"Licensee" means the same as in 9 A.A.C. 10, Article 1.

"Medical practitioner" means a physician, physician assistant, or nurse practitioner.

"Partial care" means a day program of services provided to individual members or groups that is designed to improve the ability of a person to function in a community, and includes basic, therapeutic, and medical day programs.

"Physician assistant" means the same as in A.R.S. § 32-2501 except that when providing a behavioral health service, the physician assistant shall be supervised by an AHCCCS-registered psychiatrist.

"Psychiatrist" means a physician who meets the licensing requirements under A.R.S. § 32-1401 or a doctor of osteopathy who meets the licensing requirements under A.R.S. § 321800, and meets the additional requirements of a psychiatrist under A.R.S. § 36-501. "Psychologist" means a person who meets the licensing requirements under A.R.S. §§ 32-2061 and 36-501.

"Qualified behavioral health service provider" means a behavioral health service provider that meets the requirements of R9-22-1206.

"Respite" means a period of care and supervision of a member to provide rest or relief to a family member or other person caring for the member. Respite provides activities and services to meet the social, emotional, and physical needs of the member during respite.

"TRBHA" or "Tribal Regional Behavioral Health Authority" means a Native American tribe under contract with ADHS/ DBHS to coordinate the delivery of behavioral health services to eligible and enrolled members of the federally-recognized tribal nation.

R9-22-1202. ~~ADHS, Contractor, Administration and CRS Responsibilities~~ Repealed

~~**A.** ADHS responsibilities. ADHS is responsible for payment of behavioral health services provided to members, except as specified under subsection (D). ADHS' responsibility for payment of behavioral health services includes claims for inpatient hospital services, which may include physical health services, when the principal diagnosis on the hospital claim is a behavioral health diagnosis. Behavioral health diagnoses are identified as "mental disorders" in the latest International Classification of Diseases (ICD) code set as required by AHCCCS claims and encounters.~~

~~**B.** ADHS/DBHS may contract with a TRBHA for the provision of behavioral health services for American Indian members. American Indian members may receive covered behavioral health services:~~

~~1. From an IHS or tribally operated 638 facility,~~

~~2. From a TRBHA, or~~

~~3. From a RBHA.~~

~~**C.** Contractor responsibilities. A contractor shall:~~

~~1. Refer a member to a RBHA under the contract terms;~~

~~2. Provide EPSDT developmental and behavioral health screening as specified in R9-22-213;~~

~~3. Coordinate a member's transition of care and medical records; and~~

~~4. Be responsible for providing covered inpatient hospital services, which may include behavioral health inpatient hospital services, when the principal diagnosis on the hospital claim is not a behavioral health diagnosis.~~

~~**D.** Administration and CRS responsibilities. 1. The Administration shall be responsible for payment of behavioral health services provided to an ALTCS FFS or an FES member and for behavioral health services provided by IHS and tribally operated 638 facilities. The Administration is also responsible for payment of behavioral health services provided to these members during prior quarter coverage. 2. CRS shall be responsible for payment of behavioral health services provided to members enrolled with CRS.~~

R9-22-1205. Scope and Coverage of Behavioral Health Services

A. Inpatient behavioral health services. The following inpatient services are covered subject to the limitations and exclusions in this Article and Article 2.

1. Covered inpatient behavioral health services include all behavioral health services, medical detoxification, accommodations and staffing, supplies, and equipment, if the service is provided under the direction of a physician in a Medicare-certified:
   a. General acute care hospital,
   b. Inpatient psychiatric unit in a general acute care hospital, or
   c. Behavioral health hospital.
2. Inpatient service limitations:
   a. Inpatient services, other than emergency services specified in this Section, are not covered unless prior authorization is obtained.
   b. Inpatient services and room and board are reimbursed on a per diem basis. The per diem rate includes all services, except the following licensed or certified providers may bill independently for services:
      i. A licensed psychiatrist,
      ii. A certified psychiatric nurse practitioner,
      iii. A licensed physician assistant,
      iv. A licensed psychologist,
      v. A licensed clinical social worker,
      vi. A licensed marriage and family therapist,
      vii. A licensed professional counselor,
      viii. A licensed independent substance abuse counselor, and
      ix. A medical practitioner.

B. Behavioral Health Inpatient facility for children. Services provided in a Behavioral Health Inpatient facility for children as defined in 9 A.A.C. 10, Article 3 are covered subject to the limitations and exclusions under this Article.

1. Behavioral Health Inpatient facility for children services are not covered unless provided under the direction of a licensed physician in a licensed Behavioral Health Inpatient facility for children accredited by an AHCCCS approved accrediting body as specified in contract.
2. Covered Behavioral Health Inpatient facility for children services include room and board and treatment services for behavioral health and substance abuse conditions.
3. Inpatient Behavioral Health Inpatient facility for children service limitations.
   a. Services are not covered unless prior authorized, except for emergency services as specified in this Section.

b. Services are reimbursed on a per diem basis. The per diem rate includes all services, except the following licensed or certified providers may bill independently for services:

i. A licensed psychiatrist,

ii. A certified psychiatric nurse practitioner,

iii. A licensed physician assistant,

iv. A licensed psychologist,

v. A licensed clinical social worker,

vi. A licensed marriage and family therapist,

vii. A licensed professional counselor,

viii. A licensed independent substance abuse counselor, and

ix. A medical practitioner.

4. The following may be billed independently if prescribed by a provider as specified in this Section who is operating within the scope of practice:

a. Laboratory services, and

b. Radiology services.

C. Covered Inpatient sub-acute agency services. Services provided in a inpatient sub-acute facility as defined in 9 A.A.C. 10, Article 1 are covered subject to the limitations and exclusions under this Article.

1. Inpatient sub-acute facility services are not covered unless provided under the direction of a licensed physician in a licensed inpatient sub-acute facility that is accredited by an AHCCCS-approved accrediting body.
2. Covered Inpatient sub-acute facility services include room and board and treatment services for behavioral health and substance abuse conditions.
3. Services are reimbursed on a per diem basis. The per diem rate includes all services, except the following licensed or certified providers may bill independently for services:

a. A licensed psychiatrist,

b. A certified psychiatric nurse practitioner,

c. A licensed physician assistant,

d. A licensed psychologist,

e. A licensed clinical social worker,

f. A licensed marriage and family therapist,

g. A licensed professional counselor,

h. A licensed independent substance abuse counselor, and

i. A medical practitioner.

4. The following may be billed independently if prescribed by a provider specified in this Section who is operating within the scope of practice:

a. Laboratory services, and

b. Radiology services.

D. Behavioral health residential facility services. Services provided in a licensed behavioral health residential facility as defined in 9 A.A.C. 10, Article 1 are covered subject to the limitations and exclusions under this Article.

1. Behavioral health residential facility services are not covered unless provided by a licensed behavioral health residential facility.
2. Covered services include all non-prescription drugs as defined in A.R.S. § 32-1901, non-customized medical supplies, and clinical oversight or direct supervision of the behavioral health residential facility staff, whichever is applicable. Room and board are not covered services.
3. The following licensed and certified providers may bill independently for services:
    a. A licensed psychiatrist,
    b. A certified psychiatric nurse practitioner,
    c. A licensed physician assistant,
    d. A licensed psychologist,
    e. A licensed clinical social worker,
    f. A licensed marriage and family therapist,
    g. A licensed professional counselor,
    h. A licensed independent substance abuse counselor, and

E. Partial care. Partial care services are covered subject to the limitations and exclusions in this Article.

1. Partial care services are not covered unless provided by a licensed and AHCCCS-registered behavioral health agency that provides a regularly scheduled day program of individual member, group, or family activities that are designed to improve the ability of the member to function in the community. Partial care services include basic, therapeutic, and medical day programs.
2. Partial care s6t56ervices. Educational services that are therapeutic and are included in the member's behavioral health treatment plan are included in per diem reimbursement for partial care services.

F. Outpatient services. Outpatient services are covered subject to the limitations and exclusions in this Article and Article 2.

1. Outpatient services include the following:
    a. Screening provided by a behavioral health professional or a behavioral health technician as defined in ~~R9-22-1201~~9 A.A.C. 10, Article 1;
    b. A behavioral health assessment provided by a behavioral health professional or a behavioral health technician;
    c. Counseling including individual therapy, group therapy, and family therapy provided by a behavioral health professional or a behavioral health technician;
    d. Behavior management services as defined in R9-22-1201; and
    e. Psychosocial rehabilitation services as defined in R9-22-201.
2. Outpatient service limitations.
    a. The following licensed or certified providers may bill independently for outpatient services:
        i. A licensed psychiatrist;
        ii. A certified psychiatric nurse practitioner;
        iii. A licensed physician assistant as defined in R922-1201;
        iv. A licensed psychologist;

v. A licensed clinical social worker;

vi. A licensed professional counselor;

vii. A licensed marriage and family therapist;

viii. A licensed independent substance abuse counselor;

ix. A medical practitioner; and

x. An outpatient treatment center or substance abuse transitional facility licensed under 9 A.A.C. 10, Article 14, that is an AHCCCS-registered provider.

b. A behavioral health practitioner not specified in subsections (F)(2)(a)(i) through (x), who is contracted with or employed by an AHCCCS-registered behavioral health agency shall not bill independently.

G. Emergency behavioral health services are covered subject to the limitations and exclusions under this Article. In order to be covered, behavioral health services shall be provided by qualified service providers under R9-22-1206. ~~ADHS/DBHS shall ensure that emergency behavioral health services are available 24 hours per day, seven days per week in each GSA for an emergency behavioral health condition for a non-FES member as defined in R9-22-201.~~

H. Other covered behavioral health services. Other covered behavioral health services include:

1. Case management as defined in ~~9 A.A.C. 10, Article 1~~R9-22-1201;
2. Laboratory and radiology services for behavioral health diagnosis and medication management;
3. Medication;
4. Monitoring, administration, and adjustment for psychotropic medication and related medications;
5. Respite care as described within subsection (J);
6. Behavioral health therapeutic home care services provided ~~by a RBHA~~ in a professional foster home defined in 6 A.A.C. 5, Article 58 or in an adult behavioral health therapeutic home as defined in 9 A.A.C. 10, Article 1;
7. Other support services to maintain or increase the member's self-sufficiency and ability to live outside an institution. Transportation services.

I. Transportation services are covered under R9-22-211.

J. Limited Behavioral Health services. Respite services are limited to no more than 600 hours per benefit year.

R9-22-1207. General Provisions for Payment

A. Claims submissions.

1. A provider of behavioral health services shall submit a claim for non-emergency behavioral health services provided to a member to the appropriate ~~RBHA~~health plan.
2. A provider of behavioral health services shall submit a claim for non-inpatient emergency behavioral health services provided to a member to the appropriate ~~RBHA~~health plan.
3. A provider of behavioral health services shall submit a claim for non-inpatient emergency behavioral health services provided to a member enrolled in a TRBHA to the Administration.
4. A provider of behavioral health services shall submit a claim for non-emergency behavioral health services provided to a member enrolled in a TRBHA to the Administration.

5. A provider of emergency behavioral health services~~, that are the responsibility of ADHS/DBHS or a contractor,~~ shall submit a claim to the ~~entity~~RBHA responsible for emergency behavioral health services ~~under R9-22-210.01(A)~~for the geographic service area the service was provided in.
6. A provider shall comply with the time-frames and other payment procedures in Article 7 of this Chapter, if applicable, and A.R.S. § 36-2904.
7. ~~ADHS/DBHS or a contractor, whichever entity is~~All health plans responsible for covering behavioral health services, shall cost avoid any behavioral health service claims if it establishes the existence or probable existence of first-party liability or third-party liability.

B. 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, the Administration or a contractor.