NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

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

PREAMBLE

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

R9-28-702	Amend
R9-28-703	Amend

2. 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, 36-2903, 36-2932

Implementing statute: A.R.S. §§ 36-2999.52, 36-2999.54

3. 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: [to be filled in by SOS editor]

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

Name: Mariaelena Ugarte

Address: AHCCCS
Office of Administrative Legal Services
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034

Telephone: (602) 417-4693

Fax: (602) 253-9115

E-mail: AHCCCSRules@azahcccs.gov

Web site: www.azahcccs.gov

5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking: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. § 36-2999.52 authorizes the Administration to administer a provider assessment on health care items and services provided by nursing facilities and to make supplemental payments to nursing facilities for covered Medicaid expenditures. The Administration is proposing an amendment to rule to revise the process for calculating the nursing facility assessment using Uniform Accounting Report data submitted to the Arizona Department of Health Services and amending the dollar amounts used to calculate the assessment. In addition, the proposed rules update terminology and clarify language in both the assessment and supplemental payment sections so that the methodology is more concise and understandable.

6. 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 revising the regulations.

7. 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.

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

The Administration anticipates no economic impact on the implementing agency, small businesses and consumers, since the increase assessments will equate to increased supplemental payments.

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

Name: Mariaelena Ugarte
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Office of Administrative Legal Services
701 E. Jefferson, Mail Drop 6200

	Phoenix, AZ 85034
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10. 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:

Proposed rule language will be available on the AHCCCS website www.azahcccs.gov the week of March 3, 2014. Please send written or email comments to the above address by the close of the comment period, 5:00 p.m., April 21, 2014.

Date:	April 21, 2014
Time:	12:00 p.m.
Location:	AHCCCS
	701 East Jefferson
	Phoenix, AZ 85034
Nature:	Public Hearing

Date:	April 21, 2014
Time:	12:00 p.m.
Location:	ALTCS: Arizona Long-Term Care System
	1010 N. Finance Center Dr, Suite 201
	Tucson, AZ 85710
Nature:	Public Hearing

Date:	April 21, 2014
Time:	12:00 p.m.
Location:	2717 N. 4th St. STE 130
	Flagstaff, AZ 86004
Nature:	Public Hearing

11. 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:

Not applicable

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.

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

13. The full text of the rules follows:

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

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

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-28-702. Nursing Facility Assessment

A. For purposes of ~~this Section~~ R9-28-702 and R9-28-703, in addition to the definitions under A.R.S. 36-2999.51, the following terms have the following meaning unless the context specifically requires another meaning:

"820 transaction" means the standard health care premium payments transaction required by 45 CFR 162.1702.

"Assessment year" means the 12 month period beginning October 1st each year

~~"Nursing Facility Assessment" means a tax paid by a qualifying nursing facility to the Department of Revenue on a quarterly basis established under A.R.S. § 36-2999.52.~~

~~"Medicaid days" means days of nursing facility services paid for by the Administration or its contractors as the primary payor and as reported in AHCCCS' claim and encounter data.~~

"Medicaid patient days" means patient days reported on the Nursing Care Institution UAR as attributable to AHCCCS and its contractors as the primary payer.

~~"Medicare days" means resident days where the Medicare program, a Medicare advantage or special needs plan, or the Medicare hospice program is the primary payor.~~

"Medicare patient days" means patient days reported on the Nursing Care Institution UAR as Skilled Medicare Patient Days or Part C/Advantage/Medicare Replacement Days.

~~Non-Medicare days" means the difference of days between total days and Medicare days.~~

"Nursing Care Institution UAR" means the Nursing Care Institution Uniform Accounting Report described by R9-11-204.

~~"Payment year" means the 12 month period beginning October 1st each year.~~

B. Subject to Centers for Medicare and Medicaid Services (CMS) approval, effective October 1, 2012, nursing facilities shall be subject to a provider assessment payable on a quarterly basis.

C. All nursing facilities licensed in the state of Arizona shall be subject to the provider assessment except for:

1. A continuing care retirement community,
2. A facility with 58 or fewer beds, according to the Arizona Department of Health Services, Division of Licensing Services, Provider & Facility Database,
3. A facility designated by the Arizona Department of Health Services as an Intermediate Care Facility for the ~~Mentally Retarded~~ Intellectually Disabled, ~~or~~
4. A tribally owned or operated facility located on a reservation, or
5. Arizona Veteran's Homes

D. The Administration shall calculate the prospective nursing facility provider assessment for qualifying nursing facilities as follows:

~~1. The Administration shall utilize each nursing facility's Uniform Accounting Report (UAR) submitted to the Arizona Department of Health Services as of August 1st immediately preceding the assessment year. In addition, by August 1st each year, each nursing facility shall provide the Administration with any additional information necessary to determine the assessment. For any nursing facility that does not provide by August 1st the additional information requested by the Administration, the Administration shall determine the assessment based on the information available.~~

1. In September of each year, the Administration shall obtain from the Arizona Department of Health Services the most recently published Nursing Care Institution UAR and the information required in subsection (C)(2). At the request of the Administration a nursing facility shall provide the Administration with any additional information necessary to determine the assessment.
2. The Administration shall use the information obtained under subsection (D)(1) to determine:
   a. each nursing facility's total annual Medicaid patient days,
   b. each nursing facility's total annual Medicare patient days,
   c. each nursing facility's total annual patient days,
   d. the aggregate net patient service revenue of all assessed providers, and
   e. the slope described under 42 CFR 433.68(e)(2).

~~2.~~3. For each nursing facility, other than a nursing facility ~~noted~~ exempted in subsection ~~(D)(3)~~ (C) or described in subsection (D)(4), the provider assessment is calculated by multiplying the nursing facility's ~~non-Medicare resident day data for each assessment year by $7.50~~ total annual patient days other than Medicare patient days by $10.50.

~~3.~~4. For a nursing facility, other than a nursing facility exempted in subsection (C), with ~~the~~ a number of total annual Medicaid patient days greater than or equal to the number required to achieve a slope of at least 1 applying the uniformity tax waiver test described in 42 CFR 433.68(e)(2), the provider assessment is calculated by multiplying the nursing facility's ~~non-Medicare resident day data for each assessment year by~~ ~~$1.00~~ total annual patient days other than Medicare patient days by $1.40.

~~4.~~5. ~~The number of annual Medicaid days used in subsection (D)(3) shall be recalculated each August 1, to achieve a slope of at least 1 applying the uniformity tax waiver test described in 42 CFR 433.68(e)(2).~~

For each assessment year the slope described under 42 CFR 433.68(e)(2) shall be recalculated.

~~5.~~6. The total annual assessment calculated under subsections ~~(D)(2), (D)(3) and (D)(4)~~ (D)(3), (D)(4) and (D)(5), shall not exceed 3.5 percent of the aggregate net patient service revenue of all assessed providers as reported on the Nursing Care Institution UAR obtained under subsection (D)(1).

7. All calculations and determinations necessary for the provider assessment shall be based on information possessed by the Administration on or before November 1 of the assessment year.

~~6.~~8. The Administration ~~will~~ shall forward the provider assessment ~~by facility~~ for all assessed facilities to the Arizona Department of Revenue by no later than December 1 of ~~preceding~~ the assessment year.

~~7.~~9. In the event a nursing facility closes during the assessment year, the nursing facility shall cease to be responsible for the portion of the assessment applied to the dates the nursing facility is not operating.

~~8.~~10. In the event a nursing facility begins operation during the assessment year, that facility ~~would~~ will have no responsibility for the assessment until such time as the facility has ~~UAR data that falls within the collection period for the assessment calculation~~ submitted to the Arizona Department of Health Services the report required by R9-11-204(A) covering a full year of operation.

~~9.~~11. In the event a nursing facility has a change of ownership such that the facility remains open and the ownership of the facility changes, the assessment liability transfers with the change in ownership.

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 contactor 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)(2)~~ (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 ~~the Contractors~~ its contractors shall be required to make quarterly payments to facilities otherwise required by subsections (A)(3) or (A)(4) until the ~~assessment collected and actually~~ amount available in the nursing facility assessment fund established by A.R.S. § 36-2999.53, plus the corresponding federal financial participation, ~~are~~ is equal to or greater than 101% of the amount necessary ~~for contractors to make the payments to facilities described in subsections (A)(4) and (A)(5)~~ to make such payments in full.

6. Contractors shall not be required to make quarterly payments to facility otherwise required by subsection ~~(A)(4)~~ (A)(3) until the Administration has made a retroactive adjustment to the capitation rates paid to contractors to correct the Nursing Facility Enhanced ~~payments~~ 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~~ 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 ~~subsection (A)~~ 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)(2)(ii)~~ (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.