

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

ARTICLE 7. STANDARDS FOR PAYMENTS

PREAMBLE

**1. Articles, Parts, or Sections Affected**

R9-22-721

**Rulemaking Action:**

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. § 36-2905.03

Implementing statutes: A.R.S. § 36-2905.01

**3. The effective date of the rule:**

As specified in A.R.S. § 41-1032(A)(4), AHCCCS requests an immediate effective date to provide a benefit to the public and a penalty is not associated with a violation of the rule.

**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: 25 A.A.R. 1803, July 12, 2019.

Notice of Proposed Rulemaking: 25 A.A.R. 1790, July 12, 2019.

**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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

During the 2018 legislative session, the Arizona legislature enacted A.R.S. § 36-2905.03 which provided that non-contracted behavioral health inpatient facilities (BHIF's) would be reimbursed at 90% of the contracted rate. This rulemaking is an effort to codify and clarify which facilities this statute applies to.

AHCCCS intends to encourage contracting between providers and all contractors to best serve AHCCCS members who require inpatient stays, regardless of whether the BHIF is contracted. The amended rule will encourage competition among BHIF's and Contractors, expand provider networks, promote administrative efficiencies, and authorize AHCCCS to more efficiently and effectively reimburse BHIF's for inpatient stays. Current federal and state statutory provisions do not prohibit such a change. The proposed rulemaking will also limit AHCCCS Program expenditures to BHIF's in this State by extending applicability of the 90% reimbursement to all AHCCCS Contractors responsible for payments to non-contracted BHIF's. As a result, the rulemaking supports payments to BHIF's that are consistent with efficiency, economy, and quality of care, promoting the fiscal health of the State.

**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:**

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:**

This rulemaking does not diminish a previous grant of authority of a political subdivision.

**9. A summary of the economic, small business, and consumer impact:**

This rulemaking creates greater opportunities for contracts between contractors and behavioral health inpatient facilities. Based on these changes, the economic impact of this rulemaking will be a savings due to paying 90% of the reimbursement rate BHIF's stays if they are non-contracting. Since the rulemaking may incentivize urban hospitals to contract at a greater rate, exact savings going forward cannot be predicted; however, it is estimated to be over \$2 million less per year.

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

No changes between the proposed rulemaking and the final rulemaking have been made.

**11. An agency's summary of the public or stakeholder comments made about the rule making and the agency response to the comments:**

Name and Position of Commenter	Date of Comment	Text of Comment	AHCCCS Response
Jennifer A. Carusetta, Executive Director – Health System Alliance of Arizona	07/23/18	<p>On behalf of the Health System Alliance of Arizona (Alliance), it is with great pleasure that I write this letter of support for the AHCCCS Differential Adjusted Payment Proposal.</p> <p>As integrated hospital systems, members of the Alliance value the importance of promoting innovation and efficiency through the Medicaid reimbursement model. We appreciate the Administration’s leadership in developing a payment methodology that rewards providers for quality improvement initiatives, such as participating in the state health information Exchange, and for its continued willingness to look for ways to increase reimbursement for hospital systems, whose rates have been dramatically reduced and frozen since the reduction taken during the Great Recession.</p> <p>We know that this is just the beginning of the discussion. We look forward to working with you as partners in the coming months to develop a strategy to address what we know is a looming fiscal cliff in federal matching dollars to the state of Arizona. The impact of this reduction in matching dollars stands to not only impact our facilities, but also access to care for the patients we all care for. We are committed to partnering with you and lending our resources to finding solutions throughout this process.</p> <p>Once again, we sincerely appreciate your leadership and consideration of the concerns and questions we raised throughout this process. I am happy to answer any questions or provide additional information.</p>	AHCCCS appreciates Ms. Carusetta’s comments and the support of the Health System Alliance of Arizona.

**12. Other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules.**

There are no other matters prescribed by statute applicable to rulemaking specific to this agency, to this specific rule, or to this class of rules.

**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 provider to obtain a permit or a general permit.

**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 rule must comply with 42 CFR 438.6 and is not more stringent than 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:**

No such 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 rules:**

The rule does not include any incorporation by reference of materials as specified in statute.

**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:**

The rule was not previously made, amended or repealed as an emergency rule.

**15. The full text of the rules follows:**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION**

**ARTICLE 7. STANDARD FOR PAYMENTS**

Section

R9-22-721. ~~Reserved~~ Behavioral Health Inpatient Facilities

**ARTICLE 7. STANDARD FOR PAYMENTS**

**R9-22-721. ~~Reserved~~ Behavioral Health Inpatient Facilities**

- A.** “Behavioral health inpatient facility” means a health care institution, other than Arizona State Hospital, that meets the following requirements:
1. Provides continuous treatment to an individual experiencing a behavioral health issue that causes the individual to:
    - a. Have a limited or reduced ability to meet the individual's basic physical needs;
    - b. Suffer harm that significantly impairs the individual's judgment, reason, behavior, or capacity to recognize reality;
    - c. Be a danger to self;
    - d. Be a danger to others;
    - e. Be persistently or acutely disabled as defined in A.R.S. § 36-501; or
    - f. Be gravely disabled; and
  2. Is one of the following facility types:
    - a. Psychiatric hospitals;
    - b. Mental health residential treatment centers;
    - c. Secure residential treatment centers with 17 or more beds;
    - d. Non-secure residential treatment centers with 1-16 beds;
    - e. Non-secure residential treatment centers with 17 or more beds;
    - f. Sub-acute facilities with 1-16 beds;
    - g. Sub-acute facilities with 17 or more beds.