

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 3. AGRICULTURE

#### CHAPTER 9. DEPARTMENT OF AGRICULTURE AGRICULTURAL COUNCILS AND COMMISSIONS

[R05-40]

#### PREAMBLE

- 1. Sections Affected**

Article 1	<b><u>Rulemaking Action</u></b>
R3-9-101	New Article
R3-9-102	New Section
R3-9-103	New Section
R3-9-104	New Section
R3-9-105	New Section
R3-9-106	New Section
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 3-526  
Implementing statute: A.R.S. § 3-526.02(C)(9).
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 10 A.A.R. 367, January 30, 2004
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Rebecca Nichols, Rules Analyst  
Address: Arizona Department of Agriculture  
1688 W. Adams, Room 235  
Phoenix, AZ 85007  
Telephone: (602) 542-0962  
Fax: (602) 542-5420  
E-mail: rmichols@azda.gov
- 5. An explanation of the rules, including the agency's reasons for initiating the rules:**

This rulemaking establishes procedures for governance of the AILRC as prescribed under A.R.S. § 3-526.02. It also codifies the process under which the AILRC will conduct grant making. This AILRC received an exemption from Chapter 24 of the A.R.S. that applies to the solicitation of grants statute. A.R.S. § 41-2701 et seq.
- 6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, any analysis of each study and other supporting material:**

None
- 7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules 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:**

Notices of Proposed Rulemaking

A. *The Arizona Iceberg Lettuce Research Council and the Arizona Department of Agriculture.*

The AILRC and the Department will incur modest expenses related to educating the regulated community on the new Sections.

B. *Political Subdivision.*

Other than the AILRC and the Department, the Office of Administrative Hearings may be affected by this rulemaking if a hearing is requested.

C. *Businesses Directly Affected By the Rulemaking.*

Iceberg lettuce producers, grower-shippers, handlers, researchers and universities are the beneficiaries of Grants programs developed by the AILRC.

The regulated community the AILRC serves, as well as the AILRC itself, will be beneficially affected by the use of the Grant rule as well as the administrative rules.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Rebecca Nichols, Rules Analyst  
Address: Arizona Department of Agriculture  
1688 W. Adams, Room 235  
Phoenix, AZ 85007  
Telephone: (602) 542-0962  
Fax: (602) 542-5420  
E-mail: rmichols@azda.gov

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

An oral proceeding is not scheduled for these proposed rules. To request an oral proceeding or to submit comments, please contact the rules analyst listed in item #4 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except legal holidays. If a request for an oral proceeding is not made, the public record for this rulemaking will close April 21, 2005.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

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

TITLE 3. AGRICULTURE

CHAPTER 9. DEPARTMENT OF AGRICULTURE  
AGRICULTURAL COUNCILS AND COMMISSIONS

**ARTICLE 5. ARIZONA ICEBERG LETTUCE RESEARCH COUNCIL**

Section

<u>R3-9-101.</u>	<u>Definitions</u>
<u>R3-9-102.</u>	<u>Elections</u>
<u>R3-9-103.</u>	<u>Hearings</u>
<u>R3-9-104.</u>	<u>Annual Report</u>
<u>R3-9-105.</u>	<u>Records</u>
<u>R3-9-106.</u>	<u>Grants</u>

**ARTICLE 5. ARIZONA ICEBERG LETTUCE RESEARCH COUNCIL**

**R3-9-101. Definitions**

In addition to the definitions in A.R.S. § 3-526, the following terms apply to this Article:

1. "Department" means the Arizona Department of Agriculture.
2. "AILRC" means the Arizona Iceberg Lettuce Research Council.
3. "Applicant" includes an individual, firm, association, partnership, trust or corporation who applies for a grant under

this Article.

4. "Grant" means an award of financial support to an applicant for research in accordance with A.R.S. § 3-526.02(B) and (C)(5).
5. "Authorized signature" means the signature of an individual authorized to receive funds on behalf of the applicant and the person who becomes responsible for the execution of the proposed project responsibilities.
6. "Awardee" means a successful applicant who has been awarded grant funds for research on a specific project.
7. "Grant award agreement" means a document advising the applicant of the amount of money to be awarded following receipt by the AILRC of a signed acceptance by the applicant.

**R3-9-102. Elections**

- A.** The AILRC shall elect officers during the first quarter of each calendar year.
- B.** Officers shall continue in office until the next annual election is held.
- C.** An officer may be successively reelected.

**R3-9-103. Hearings**

- A.** The AILRC shall use the uniform administrative procedures of A.R.S. Title 41, Chapter 6, Article 10 to govern any hearing before the AILRC.
- B.** A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.
- C.** The AILRC shall grant a rehearing or review of an administrative law decision for any of the following causes materially affecting the moving party's rights:
  1. The decision is not justified by the evidence or is contrary to law;
  2. There is newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original proceeding;
  3. One or more of the following deprived the party of a fair hearing:
    - a. Irregularity or abuse of discretion in the conduct of the proceeding;
    - b. Misconduct of the AILRC, the administrative law judge, or the prevailing party; or
    - c. Accident or surprise that could not have been prevented by ordinary prudence; or
  4. Excessive or insufficient sanction.
- D.** The AILRC may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (C). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

**R3-9-104. Annual Report**

The AILRC shall prepare an annual report as prescribed under A.R.S. § 3-526.02(A)(5), by October 31.

**R3-9-105. Records**

The AILRC shall retain records as authorized by A.R.S. § 3-526.02(A)(4). A record may be reviewed at the AILRC's office, Monday through Friday, except an Arizona legal holiday, during the hours of 8 a.m. to 5 p.m. A copy of a record shall be provided according to the provisions of A.R.S. § 39-121 et seq.

**R3-9-106. Grants**

- A.** Grant Application Process
  1. The AILRC shall award any grant in accordance with the competitive grant solicitation requirements of this Article.
  2. Public notice of the request for grant applications shall be listed in the Grant Application Manual, which will be available upon request at the Department at least 4 weeks prior to the due date for submittal of the applications. In addition, a notice will be posted to the AILRC's web page at that time.
  3. Grant Application Manuals shall include the following information:
    - a. The statutory provisions for AILRC research A.R.S. § 3-526.02 (B) and (C)(5) which includes: Research, development and survey programs concerning varietal development; Programs for lettuce pest eradication; Programs concerning production, harvesting, handling and hauling from field to market; Any other programs, excluding sales or marketing, that the AILRC deems to be appropriate for the purposes of A.R.S § 3-526 et seq.; Finance appropriate studies conducted by research agencies or to purchase or acquire equipment and facilities consistent with A.R.S § 3-526 et seq.
    - b. That information contained in an application shall not be confidential.
    - c. That the source of funding is primarily from per carton assessments on iceberg lettuce grown in Arizona.
    - d. A sample application form including sections about the description of the grant project, scope of work to be performed by an awardee, an authorized signature line, and a sample budget form.
    - e. The criteria by which applications shall be evaluated for award.
    - f. The due date and time for submittal of applications and the anticipated date the awards shall be made.
    - g. That an application shall be received (and not merely postmarked), by the date and time the applications are due; late applications received by the AILRC shall be returned without review.



- project.
6. Awardees shall be required to present a final research report and invoice to the AILRC prior to full payment of the grant.
  7. Research findings and reports resulting from any grant awarded by the AILRC shall be made available to Arizona iceberg lettuce producers through the AILRC.
- G.** Repayment. All unexpended funds shall be returned to the AILRC upon completion of the project. In the event the project is not completed, unexpended funds shall be returned within 30 days after receipt of the AILRC's written request.

## NOTICE OF PROPOSED RULEMAKING

### TITLE 9. HEALTH SERVICES

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

[R05-36]

#### PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|-----------------------------|--------------------------|
| R9-22-101                   | Amend                    |
| R9-22-710                   | Amend                    |
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):  
Authorizing statute: A.R.S. §§ 36-2904 and 36-2239  
Implementing statute: A.R.S. §§ 36-2904 and 36-2239
  3. A list of all previous notices appearing in the Register addressing the proposed rule:  
Notice of Rulemaking Docket Opening: 10 A.A.R. 3665, September 3, 2004
  4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:  
Name: Mariaelena Ugarte  
Address: AHCCCS  
Office of Legal Assistance  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4232  
Fax: (602) 253-9115  
E-mail: AHCCCSRules@ahcccs.state.az.us
  5. An explanation of the rule, including the agency's reasons for initiating the rule:  
The proposed rules were amended as result of a Five-Year Rule Review, finding that clarification was needed to address how payments are made for non-hospital services.
  6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not 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:  
No studies were reviewed.
  7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule 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:  
AHCCCS anticipates no impact.
  9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:  
Name: Mariaelena Ugarte  
Address: AHCCCS  
Office of Legal Assistance

Notices of Proposed Rulemaking

701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4232  
Fax: (602) 256-6756  
E-mail: AHCCCSRules@ahcccs.state.az.us

Proposed rule language will be available on the AHCCCS web site [www.ahcccs.state.az.us](http://www.ahcccs.state.az.us) the week of January 28, 2005. Please send written comments to the above address by 5:00 p.m., March 14, 2005. E-mail will be accepted.

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: March 14, 2005  
Time: 3:00 p.m.  
Location: AHCCCS  
701 E. Jefferson  
Phoenix, AZ 85034  
Gold Room  
Nature: Public Hearing  
Date: March 14, 2005  
Time: 3:00 p.m.  
Location: ALTCS: Arizona Long-term Care System  
110 S. Church, Suite 1360  
Tucson, AZ 85701  
Nature: Public Hearing  
Date: March 14, 2005  
Time: 3:00 p.m.  
Location: ALTCS: Arizona Long-term Care System  
3480 E. Route 66  
Flagstaff, AZ 86004  
Nature: Public Hearing

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

42 CFR 447.205, December 19, 1983, R9-22-710

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

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
ADMINISTRATION

ARTICLE 1. DEFINITIONS

Section  
R9-22-101. Location of Definitions

ARTICLE 7. STANDARDS FOR PAYMENTS

Section  
R9-22-710. Capped Fee-for-service Payments for Non-hospital Services

**ARTICLE 1. DEFINITIONS**

**R9-22-101. Location of Definitions**

**A.** Location of definitions. Definitions applicable to this Chapter are found in the following:

Definition	Section or Citation
“Accommodation”	R9-22-107
“Act”	R9-22-114
“Active case”	R9-22-109
“ADHS”	R9-22-112
“Administration”	A.R.S. § 36-2901
“Administrative law judge”	R9-22-108
“Administrative review”	R9-22-108
“Advanced Life Support” or “ALS”	R9-25-101
“Adverse action”	R9-22-114
“Affiliated corporate organization”	R9-22-106
“Aged”	42 U.S.C. 1382c(a)(1)(A) and R9-22-115
“Aggregate”	R9-22-107
“AHCCCS”	R9-22-101
“AHCCCS inpatient hospital day or days of care”	R9-22-107
“AHCCCS registered provider”	R9-22-101
“Ambulance”	A.R.S. § 36-2201
“Ancillary department”	R9-22-107
“Annual assessment period”	R9-22-109
“Annual assessment period report”	R9-22-109
“Annual enrollment choice”	R9-22-117
“Appellant”	R9-22-114
“Applicant”	R9-22-101
“Application”	R9-22-101
“Assignment”	R9-22-101
“Attending physician”	R9-22-101
“Authorized representative”	R9-22-114
“Auto-assignment algorithm”	R9-22-117
“Baby Arizona”	R9-22-114
“Basic Life Support” or “BLS”	R9-25-101
“Behavior management services”	R9-22-112
“Behavioral health evaluation”	R9-22-112
“Behavioral health medical practitioner”	R9-22-112
“Behavioral health professional”	R9-20-101
“Behavioral health service”	R9-22-112
“Behavioral health technician”	R9-20-101
“Behavior management services”	R9-22-112
“BHS”	R9-22-114
“Billed charges”	R9-22-107
“Blind”	R9-22-115
“Board-eligible for psychiatry”	R9-22-112
“Burial plot”	R9-22-114
“Capital costs”	R9-22-107
“Capped fee-for-service”	R9-22-101
“Caretaker relative”	R9-22-114
“Case”	R9-22-109
“Case record”	R9-22-109
“Case review”	R9-22-109
“Cash assistance”	R9-22-114
“Categorically-eligible”	R9-22-101
“Certified psychiatric nurse practitioner”	R9-22-112
“Clean claim”	A.R.S. § 36-2904
“Clinical supervision”	R9-22-112
“CMDP”	R9-22-117
“CMS”	R9-22-101

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“Complainant”	R9-22-108
“Continuous stay”	R9-22-101
“Contract”	R9-22-101
“Contractor”	A.R.S. § 36-2901
“Copayment”	R9-22-107
“Corrective action plan”	R9-22-109
“Cost-to-charge ratio”	R9-22-107
“Covered charges”	R9-22-107
“Covered services”	R9-22-102
“CPT”	R9-22-107
“CRS”	R9-22-114
“Cryotherapy”	R9-22-120
“Date of eligibility posting”	R9-22-107
“Date of notice”	R9-22-108
“Day”	R9-22-101
“DCSE”	R9-22-114
“De novo hearing”	42 CFR 431.201
“Dentures”	R9-22-102
“Department”	A.R.S. § 36-2901
“Dependent child”	A.R.S. § 46-101
“DES”	R9-22-101
“Diagnostic services”	R9-22-102
“Director”	R9-22-101
“Disabled”	R9-22-115
“Discussions”	R9-22-106
“Disenrollment”	R9-22-117
“District”	R9-22-109
“DME”	R9-22-102
“DRI inflation factor”	R9-22-107
“E.P.S.D.T. services”	42 CFR 441 Subpart B
“Eligible person”	A.R.S. § 36-2901
“Emergency medical condition”	42 U.S.C. 1396b(v)(3)
“Emergency medical services”	R9-22-102
“Emergency services costs”	A.R.S. § 36-2903.07
“Encounter”	R9-22-107
“Enrollment”	R9-22-117
“Enumeration”	R9-22-101
“Equity”	R9-22-101
“Experimental services”	R9-22-101
“Error”	R9-22-109
“FAA”	R9-22-114
“Facility”	R9-22-101
“Factor”	42 CFR 447.10
“FBR”	R9-22-101
“Fee-For-Service” or “FFS”	R9-28-101
“FESP”	R9-22-101
“Finding”	R9-22-109
“First-party liability”	R9-22-110
“Foster care maintenance payment”	42 U.S.C. 675(4)(A)
“Federal poverty level” (“FPL”)	A.R.S. § 1-215
“FQHC”	R9-22-101
“Grievance”	R9-22-108
“GSA”	R9-22-101
“Health care practitioner”	R9-22-112
“Hearing”	R9-22-108
“Hearing aid”	R9-22-102
“Home health services”	R9-22-102
“Homebound”	R9-22-114
“Hospital”	R9-22-101

“Intermediate Care Facility for the Mentally Retarded” or “ICF-MR”	42 CFR 483 Subpart I
“ICU”	R9-22-107
“IHS”	R9-22-117
“IMD”	42 CFR 435.1009 and R9-22-112
“Income”	R9-22-114
“Inmate of a public institution”	42 CFR 435.1009
“Interested party”	R9-22-106
“LEEP”	R9-22-120
“Level I trauma center”	R9-22-2101
“License” or “licensure”	R9-22-101
“Mailing date”	R9-22-114
“Management evaluation review”	R9-22-109
“Medical education costs”	R9-22-107
“Medical expense deduction”	R9-22-114
“Medical record”	R9-22-101
“Medical review”	R9-22-107
“Medical services”	A.R.S. § 36-401
“Medical supplies”	R9-22-102
“Medical support”	R9-22-114
“Medically necessary”	R9-22-101
“Medicare claim”	R9-22-107
“Medicare HMO”	R9-22-101
“Member”	A.R.S. § 36-2901
“Mental disorder”	A.R.S. § 36-501
“New hospital”	R9-22-107
“Nursing facility” or “NF”	42 U.S.C. 1396r(a)
“NICU”	R9-22-107
“Noncontracting provider”	A.R.S. § 36-2901
“Nonparent caretaker relative”	R9-22-114
“Notice of Findings”	R9-22-109
“OAH”	R9-22-108
“Occupational therapy”	R9-22-102
“Offeror”	R9-22-106
“Ownership interest”	42 CFR 455.101
“Operating costs”	R9-22-107
“Outlier”	R9-22-107
“Outpatient hospital service”	R9-22-107
“Ownership change”	R9-22-107
“Partial Care”	R9-22-112
“Party”	R9-22-108
“Peer group”	R9-22-107
“Performance measures”	R9-22-109
“Pharmaceutical service”	R9-22-102
“Physical therapy”	R9-22-102
“Physician”	R9-22-102
“Prior period coverage” or “PPC”	R9-22-107
“Post-stabilization care services”	42 CFR 422.113
“Practitioner”	R9-22-102
“Pre-enrollment process”	R9-22-114
“Preponderance of evidence”	R9-22-109
“Prescription”	R9-22-102
“Primary care provider (PCP)”	R9-22-102
“Primary care provider services”	R9-22-102
“Prior authorization”	R9-22-102
“Private duty nursing services”	R9-22-102
“Proposal”	R9-22-106
“Prospective rates”	R9-22-107
“Prospective rate year”	R9-22-107

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“Psychiatrist”	R9-22-112
“Psychologist”	R9-22-112
“Psychosocial rehabilitation services”	R9-22-112
“Qualified alien”	A.R.S. § 36-2903.03
“Quality management”	R9-22-105
“Radiology”	R9-22-102
“Random sample”	R9-22-109
“RBHA”	R9-22-112
“Rebasing”	R9-22-107
“Referral”	R9-22-101
“Rehabilitation services”	R9-22-102
“Reinsurance”	R9-22-107
“Remittance advice”	R9-22-107
“Resources”	R9-22-114
“Respiratory therapy”	R9-22-102
“Respondent”	R9-22-108
“Responsible offeror”	R9-22-106
“Responsive offeror”	R9-22-106
“Review”	R9-22-114
“Review period”	R9-22-109
“RFP”	R9-22-106
“Scope of services”	R9-22-102
“SDAD”	R9-22-107
“Section 1115 Waiver”	A.R.S. § 36-2901
“Service location”	R9-22-101
“Service site”	R9-22-101
“SESP”	R9-22-101
“S.O.B.R.A.”	R9-22-101
“Specialist”	R9-22-102
“Specified relative”	R9-22-114
“Speech therapy”	R9-22-102
“Spendthrift restriction”	R9-22-114
“Spouse”	R9-22-101
“SSA”	42 CFR 1000.10
“SSI”	42 CFR 435.4
“SSN”	R9-22-101
“Stabilize”	42 U.S.C. 1395dd
“Standard of care”	R9-22-101
“Sterilization”	R9-22-102
“Subcontract”	R9-22-101
“Submitted”	A.R.S. § 36-2904
“Summary report”	R9-22-109
“SVES”	R9-22-114
“Third-party”	R9-22-110
“Third-party liability”	R9-22-110
“Tier”	R9-22-107
“Tiered per diem”	R9-22-107
“Title IV-D”	R9-22-114
“Title IV-E”	R9-22-114
“Tolerance level”	R9-22-109
“Trauma and Emergency Services Fund”	A.R.S. § 36-2903.07
“Unrecovered trauma readiness costs”	R9-22-2101
“Utilization management”	R9-22-105
“WWHP”	R9-22-120

**B.** General definitions. In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

“AHCCCS” means the Arizona Health Care Cost Containment System, which is composed of the Administration, contractors, and other arrangements through which health care services are provided to a member.

“AHCCCS registered provider” means a provider or noncontracting provider who:

Enters into a provider agreement with the Administration under R9-22-703(A); and

Meets license or certification requirements to provide AHCCCS covered services.

“Applicant” means a person who submits or whose authorized representative submits, a written, signed, and dated application for AHCCCS benefits.

“Application” means an official request for AHCCCS medical coverage made under this Chapter.

“Assignment” means enrollment of a member with a contractor by the Administration.

“Attending physician” means a licensed allopathic or osteopathic doctor of medicine who has primary responsibility for providing or directing preventive and treatment services for a fee-for-service member.

“Capped fee-for-service” means the payment mechanism by which a provider of care is reimbursed upon submission of a valid claim for a specific AHCCCS-covered service or equipment provided to a member. A payment is made in accordance with an upper, or capped, limit established by the Director. This capped limit can either be a specific dollar amount or a percentage of billed charges.

“Categorically-eligible” means a person who is eligible under A.R.S. §§ 36-2901(6)(a)(i), (ii), or (iii) and 36-2934.

“CMS” means the Centers for Medicare and Medicaid Services.

“Continuous stay” means the period during which a member receives inpatient hospital services without interruption beginning with the date of admission and ending with the date of discharge or date of death.

“Contract” means a written agreement entered into between a person, an organization, or other entity and the Administration to provide health care services to a member under A.R.S. Title 36, Chapter 29, and this Chapter.

“Day” means a calendar day unless otherwise specified.

“DES” means the Department of Economic Security.

“Director” means the Director of the Administration or the Director’s designee.

“Eligible person” means a person as defined in A.R.S. § 36-2901.

“Enumeration” means the assignment of a specific nine-digit identification number to a person by the Social Security Administration.

“Equity” means the county assessor full cash or market value of a resource minus valid liens, encumbrances, or both.

“Experimental services” means services that are associated with treatment or diagnostic evaluation that meets one or more of the following criteria:

Is not generally and widely accepted as a standard of care in the practice of medicine in the United States;

Does not have evidence of safety and effectiveness documented in peer reviewed articles in medical journals published in the United States; or

Lacks authoritative evidence by the professional medical community of safety and effectiveness because the services are rarely used, novel, or relatively unknown in the professional medical community.

“Facility” means a building or portion of a building licensed or certified by the Arizona Department of Health Services as a health care institution, under A.R.S. Title 36, Chapter 4, to provide a medical service, a nursing service, or other health care or health-related service.

“FBR” means Federal Benefit Rate, the maximum monthly Supplemental Security Income payment rate for a member or a married couple.

“FESP” means a federal emergency services program covered under R9-22-217, to treat an emergency medical condition for a member who is determined eligible under A.R.S. § 36-2903.03(D).

“FQHC” means federally qualified health center.

“GSA” means a geographical service area designated by the Administration within which a contractor provides, directly or through a subcontract, a covered health care service to a member enrolled with that contractor.

“Hospital” means a health care institution that is licensed as a hospital by the Arizona Department of Health Services under A.R.S. Title 36, Chapter 4, Article 2, and certified as a provider under Title XVIII of the Social Security Act, as

Notices of Proposed Rulemaking

amended, or is currently determined, by the Arizona Department of Health Services as the CMS designee, to meet the requirements of certification.

“License” or “licensure” means a nontransferable authorization that is awarded based on established standards in law, is issued by a state or a county regulatory agency or board, and allows a health care provider to lawfully render a health care service.

“Medical record” means all documents that relate to medical and behavioral health services provided to a member by a physician or other licensed practitioner of the healing arts and that are kept at the site of the provider.

“Medically necessary” means a covered service provided by a physician or other licensed practitioner of the healing arts within the scope of practice under state law to prevent disease, disability, or other adverse health conditions or their progression, or prolong life.

“Medicare HMO” means a health maintenance organization that has a current contract with Centers for Medicare and Medicaid for participation in the Medicare program under 42 CFR 417(L).

“Referral” means the process by which a member is directed by a primary care provider or an attending physician to another appropriate provider or resource for diagnosis or treatment.

“Service location” means a location at which a member obtains a covered health care service provided by a physician or other licensed practitioner of the healing arts under the terms of a contract.

“Service site” means a location designated by a contractor as the location at which a member is to receive covered health care services.

“SESP” means state emergency services program covered under R9-22-217 to treat an emergency medical condition for a qualified alien or noncitizen who is determined eligible under A.R.S. § 36-2901.06.

“S.O.B.R.A.” means Section 9401 of the Sixth Omnibus Budget Reconciliation Act, 1986, amended by the Medicare Catastrophic Coverage Act of 1988, 42 U.S.C. 1396a(a)(10)(A)(i)(IV), 42 U.S.C. 1396a(a)(10)(A)(i)(VI), and 42 U.S.C. 1396a(a)(10)(A)(i)(VII).

“Spouse” means a person who has entered into a contract of marriage, recognized as valid by Arizona.

“SSN” means social security number.

“Standard of care” means a medical procedure or process that is accepted as treatment for a specific illness, or injury, medical condition through custom, peer review, or consensus by the professional medical community.

“Subcontract” means an agreement entered into by a contractor with any of the following:

A provider of health care services who agrees to furnish covered services to a member;

A marketing organization; or

Any other organization or person who agrees to perform any administrative function or service for a contractor specifically related to securing or fulfilling the contractor’s obligation to the Administration under the terms of a contract.

ARTICLE 7. STANDARDS FOR PAYMENTS

**R9-22-710. Capped Fee for service Payments for Non-hospital Services**

~~A. Service codes. The Administration shall maintain a current copy of the following code manuals at the central office of the Administration for reference use during customary business hours:~~

- ~~1. The Physicians’ Current Procedural Terminology (CPT) and Health Care Financing Administration Common Procedure Coding System (HCPCS). These manuals identify medical services and procedures performed by physicians and other providers.~~
- ~~2. The AHCCCS Transportation, Supply, Equipment, and Appliance codes. These codes identify applicable services or supplied items.~~
- ~~3. The International Classification of Diseases.~~
- ~~4. Nationally recognized pharmacy coding manual.~~

~~B. Fee schedule. The Administration shall pay providers, including noncontracting providers, at the lesser of billed charges or the capped fee for service rates specified in subsections (B)(1) through (5) unless a different fee is specified by contract between the Administration and the provider, or is otherwise required by law. The Administration shall provide notice of changes in methods and standards for setting payment rates for services in accordance with 42 CFR 447.205, effective December 19, 1983, incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.~~

- ~~1. Physician services. Fee schedules for payment for physicians services are on file at the central office of the Administration for reference use during customary business hours.~~

2. Pharmacy services. Fee schedules for payment for pharmacy services are exempt from rulemaking procedures under A.R.S. § 41-1005, but are subject to 42 CFR 447.331 through 447.332, effective July 31, 1987, which is incorporated by reference and on file with the Administration and the Office of Secretary of State. These incorporations by reference contain no further editions or amendments.
3. Dental services. Fee schedules for payment for dental services are on file at the central office of the Administration for reference use during customary business hours.
4. Transportation services:
  - a. Ground ambulance services. Fee schedules for payment for ambulance services are on file at the central office of the Administration for reference use during customary business hours. For ambulance providers that have charges established by the Arizona Department of Health Services (ADHS), the fee schedule amount is 80% of the ambulance provider's ADHS-approved fees for covered services. For ambulance providers whose fees are not established by ADHS, the fee schedule amount is 80% of the ambulance provider's billed charges or the capped fee-for-service amount for covered services, whichever is less.
  - b. Air ambulance services. Fee schedules for payment for air ambulance services are on file at the central office of the Administration for reference use during customary business hours.
  - c. Nonambulance services. Fee schedules for payment for nonambulance services are on file at the central office of the Administration for reference use during customary business hours.
5. Medical equipment. Fee schedules for payment for medical equipment are on file at the central office of the Administration for reference use during customary business hours. The Administration shall reimburse providers once for durable medical equipment (DME) during any two-year period, unless the Administration determines that DME replacement within that period is medically necessary for the member. Unless authorized by the Administration, no more than one repair and adjustment shall be reimbursed during any two-year period.
- C.** Capped fee-for-service medical cost pool and payment. The Administration may establish a capped fee-for-service medical cost pool for each county in which there are capped fee-for-service physician contractors. The Administration shall pay all physician fees out of this pool. Fifteen percent of allowable physician fees shall be withheld in the pool. At the end of a contract period, the Administration shall divide any surplus or deficit remaining in the pool evenly between the Administration and the participating physicians subject to the following:
  1. The physician withhold shall be used to offset the physician portion of any deficit. Physicians shall not be responsible for any deficit greater than the aggregate amount withheld. The Administration shall return all withholds not needed to fund a deficit on a pro rata basis.
  2. The Administration shall divide the physician portion of any surplus so two-thirds goes to primary care physicians and one-third to referral physicians. These portions shall be divided pro rata among the physicians in each category subject to an upper limit. The physician portion of any surplus is limited so referral physicians receive no more than 115% of the Administration's maximum allowable fees for their services and primary care physicians receive no more than 130%.
- D.** Distribution of funds. The Administration shall make annual settlements of the medical cost pool on an incurred basis. The Administration shall estimate incurred medical costs for a contract period for settlement purposes when three full months of paid claim data can be summarized following the end of the contract period. The settlement shall occur within 105 days following the end of the contract period.
- E.** The Administration reserves the right to adjust the percentage of withholding for any individual physician whose utilization rates are deemed to be excessive based on historical physician profiles.
- A.** Capped Fee for service. The Administration shall provide notice of changes in methods and standards for setting payment rates for services in accordance with 42 CFR 447.205, December 19, 1983, incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments. In the absence of a contract that specifies otherwise, a contractor shall reimburse a provider or noncontracting provider for non-hospital services according to the Administration capped fee schedule.
  1. Procedure codes. The Administration shall maintain a current copy of the National Standard Code Sets mandated by HIPAA, under 45 CFR 160 and 45 CFR 164, at the central office of the Administration for reference use during customary business hours.
    - a. Electronic claims must be submitted consistent with federal regulations as described under 45 CFR 160.
    - b. Paper claims must be submitted using the National Standard Code Sets required by HIPAA regulations.
    - c. Failure to comply with any of the above requirements shall constitute cause for denial of claim.
  2. Fee schedule. The Administration shall pay providers, including noncontracting providers, at the lesser of billed charges or the capped fee-for-service rates specified in subsections (A)(2)(a) through (A)(2)(f) unless a different fee is specified by contract between the Administration and the provider, or is otherwise required by law.
    - a. Physician services. Fee schedules for payment for physician services are on file at the central office of the Administration for reference use during customary business hours.
    - b. Dental services. Fee schedules for payment for dental services are on file at the central office of the Administration for reference use during customary business hours.

Notices of Proposed Rulemaking

- c. Transportation services - Ground ambulance services.
    - i. Fee schedules for payment for ground ambulance services are on file at the central office of the Administration for reference use during customary business hours.
    - ii. For ground ambulance providers that have rates published in the Schedule of General Public Rates/Charges for Certified Ambulance Services by the Arizona Department of Health Services (ADHS), the fee schedule amount for base, mileage and wait time is 80% of the ambulance provider's ADHS-published rates.
    - iii. For any other ground ambulance services, including but not limited to supplies and oxygen, the payment amount is the lesser of the provider's billed charges or the capped fee-for-service amount for covered services.
    - iv. For ground ambulance providers whose rates are not published by ADHS, the payment amount for all ambulance services is the lesser of the ambulance provider's billed charges or the capped fee-for-service amount for covered services.
  - d. Transportation services - Air ambulance services. Fee schedules for payment for air ambulance services are on file at the central office of the Administration for reference use during customary business hours.
  - e. Transportation services - Nonambulance services. Fee schedules for payment for nonambulance services are on file at the central office of the Administration for reference use during customary business hours.
  - f. Medical supplies and Durable Medical Equipment (DME). Fee schedules for payment for medical supplies and durable medical equipment are on file at the central office of the Administration for reference use during customary business hours. The Administration shall reimburse providers once for purchase of DME during any two-year period, unless the Administration determines that DME replacement within that period is medically necessary for the member. Unless authorized by the Administration, no more than one repair and adjustment shall be reimbursed during any two-year period.
- B.** Pharmacy services. The Administration shall only reimburse pharmacy services provided by a contracted provider or a provider having a subcontract with a Pharmacy Benefit Manager (PBM) contracted with AHCCCS. The Administration shall reimburse pharmacy services according to the terms of the contract.
- C.** The Administration reserves the right to adjust the percentage of withholding for any individual physician whose utilization rates are deemed to be excessive based on historical physician profiles.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 9. HEALTH SERVICES**

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

[R05-37]

**PREAMBLE**

- |                                    |                                 |
|------------------------------------|---------------------------------|
| <b>1. <u>Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R9-28-706                          | Amend                           |
| R9-28-708                          | Amend                           |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. §§ 36-2904 and 36-2239  
Implementing statute: A.R.S. §§ 36-2904 and 36-2239
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**  
Notice of Rulemaking Docket Opening: 10 A.A.R. 3666, September 3, 2004
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- |            |   |
|------------|---|
| Name:      | Mariaelena Ugarte   |
| Address:   | AHCCCS<br>Office of Legal Assistance<br>701 E. Jefferson, Mail Drop 6200<br>Phoenix, AZ 85034 |
| Telephone: | (602) 417-4232  |
| Fax:       | (602) 253-9115  |

E-mail: AHCCCSRules@ahcccs.state.az.us

**5. An explanation of the rule, including the agency's reasons for initiating the rule:**

The proposed rules were amended as result of a Five-Year Rule Review to clarify how payments are made for non-hospital services. Cross-references were made to the acute care rule to be more explicit and concise.

**6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation 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:**

No studies were reviewed.

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule 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:**

AHCCCS anticipates no impact.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Mariaelena Ugarte  
Address: AHCCCS  
Office of Legal Assistance  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4232  
Fax: (602) 256-6756  
E-mail: AHCCCSRules@ahcccs.state.az.us

Proposed rule language will be available on the AHCCCS web site [www.ahcccs.state.az.us](http://www.ahcccs.state.az.us) the week of January 28, 2005. Please send written comments to the above address by 5:00 p.m., March 14, 2005. E-mail will be accepted.

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: March 14, 2005  
Time: 3:00 p.m.  
Location: AHCCCS  
701 E. Jefferson  
Phoenix, AZ 85034  
Gold Room  
Nature: Public Hearing  
Date: March 14, 2005  
Time: 3:00 p.m.  
Location: ALTCS: Arizona Long-term Care System  
110 S. Church, Suite 1360  
Tucson, AZ 85701  
Nature: Public Hearing  
Date: March 14, 2005  
Time: 3:00 p.m.  
Location: ALTCS: Arizona Long-term Care System  
3480 E. Route 66  
Flagstaff, AZ 86004  
Nature: Public Hearing

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

**13. 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 7. STANDARDS FOR PAYMENTS**

Section

R9-28-706. Payments by the Administration for Services Provided to an Eligible Person

R9-28-708. ~~Capped Fee for service~~ Payment for Non-hospital services

**ARTICLE 7. STANDARDS FOR PAYMENTS**

**R9-28-706. Payments by the Administration for Services Provided to an Eligible Person**

**A. Payment for medically necessary outpatient services.**

1. The Administration shall pay for medically necessary outpatient services provided to an eligible person from the effective date of eligibility to the date of enrollment with a program contractor at the negotiated rate, capped fee-for-service rate, or in the amount of the billed charges, whichever is lowest.
2. An eligible person residing in an area that is not served by a program contractor is eligible for ALTCS-covered services. The Administration shall make payment for medically necessary outpatient services provided to the person at the negotiated rate, capped fee-for-service rate, or in the amount of the billed charges, whichever is lowest.
3. The Administration shall pay for medically necessary outpatient services provided to an eligible person by an out-of-state provider at the capped fee-for-service rate under this Article or the Medicaid rate that is in effect for the state in which the provider is located at the time services are provided, whichever is lower.

**B. The Administration shall make payment in accordance with 9 A.A.C. 22, Article 7 for covered hospital services provided to an eligible person on or after March 1, 1993.**

**C. The Administration shall pay for non-hospital services as described under R9-22-710.**

**R9-28-708. ~~Capped Fee for service~~ Payment for Non-hospital services**

**A. ~~Service codes. The Administration shall maintain a current copy of the following code manuals at the central office of the Administration for reference use during customary business hours:~~**

1. ~~The Physicians' Current Procedural Terminology (CPT) and Health Care Financing Administration Common Procedures Coding System (HCPCS) shall be utilized to identify medical services and procedures performed by physicians and other providers.~~
2. ~~The Code on Dental Procedures and Nomenclature, as published in the Journal of the American Dental Association, shall be utilized to identify dental procedures.~~
3. ~~The International Classification of Diseases.~~
4. ~~The American Druggist Blue Book.~~

**B. ~~Fee schedule. The Administration shall pay providers and noncontracting providers at the capped fee for service rates specified below unless a different fee is specified by contract or otherwise required by this Article. Notice of changes in methods and standards for setting payment rates for services shall be in accordance with 42 CFR 447.205, January 18, 1984, incorporated by reference herein and on file with the Office of the Secretary of State.~~**

1. ~~ALTCS services. Payment shall be in accordance with the lower of the negotiated rate or fee schedules which are on file at the central office of the Administration for reference during customary business hours.~~
2. ~~Physician services. Payment shall be in accordance with fee schedules which are on file at the central office of the Administration for reference use during customary business hours.~~
3. ~~Hospital services. Hospital services provided to eligible persons shall be paid pursuant to A.A.C. R9-22-712.~~
4. ~~Pharmacy services. Payment shall be in accordance with fee schedules which are on file at the central office of the Administration for reference use during customary business hours. The maximum allowable rates under the fee schedules shall not exceed the payment levels established pursuant to 42 CFR 447.331 through 447.332, incorporated by reference herein and on file with the Office of the Secretary of State.~~
5. ~~Dental services. Payment shall be in accordance with fee schedules which are on file at the central office of the Administration for reference use during customary business hours.~~
6. ~~Transportation services. Payment for transportation services shall be made in accordance with A.A.C. R9-22-710.~~
7. ~~Medical equipment. Payment for medical equipment shall be in accordance with fee schedules which are on file at the~~

Notices of Proposed Rulemaking

central office of the Administration for reference use during customary business hours. Providers shall be reimbursed once for the durable medical equipment (DME) during any given two-year period, unless the Administration determines that DME replacement within that period is medically necessary for the member. Unless authorized by the Administration, no more than one repair and adjustment shall be reimbursed during any two-year period.

**A. Capped Fee for service for ALTCS services:**

1. The ALTCS services shall be paid in accordance with R9-22-710.
2. Payment shall be in accordance with the lower of the negotiated rate or fee schedules which are on file at the central office of the Administration for reference during customary business hours.

**B. Pharmacy services. The ALTCS services shall be paid in accordance with R9-22-710.**

**C. The Administration reserves the right to adjust as described under R9-22-710.**

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
CHILDREN'S HEALTH INSURANCE PROGRAM**

[R05-38]

**PREAMBLE**

**1. Sections Affected**

R9-31-710  
R9-31-1616

**Rulemaking Action**

Amend  
Amend

**2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 36-2904 and 36-2239  
Implementing statute: A.R.S. §§ 36-2904 and 36-2239

**3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 11 A.A.R. 415, January 14, 2005

**4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Mariaelena Ugarte  
Address: AHCCCS  
Office of Legal Assistance  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4232  
Fax: (602) 253-9115  
E-mail: AHCCCSRules@ahcccs.state.az.us

**5. An explanation of the rule, including the agency's reasons for initiating the rule:**

The proposed rules were amended as result of a Five-Year Rule Review to clarify how payments are made for non-hospital services. Cross-references were made to the acute care rule to be more explicit and concise.

**6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not 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:**

No studies were reviewed.

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule 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:**

AHCCCS anticipates no impact.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Notices of Proposed Rulemaking

Name: Mariaelena Ugarte  
Address: AHCCCS  
Office of Legal Assistance  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4232  
Fax: (602) 256-6756  
E-mail: AHCCCSRules@ahcccs.state.az.us

Proposed rule language will be available on the AHCCCS web site [www.ahcccs.state.az.us](http://www.ahcccs.state.az.us) the week of January 28, 2005. Please send written comments to the above address by 5:00 p.m., March 14, 2005. E-mail will be accepted.

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: March 14, 2005  
Time: 3:00 p.m.  
Location: AHCCCS  
701 E. Jefferson  
Phoenix, AZ 85034  
Gold Room  
Nature: Public Hearing  
Date: March 14, 2005  
Time: 3:00 p.m.  
Location: ALTCS: Arizona Long-term Care System  
110 S. Church, Suite 1360  
Tucson, AZ 85701  
Nature: Public Hearing  
Date: March 14, 2005  
Time: 3:00 p.m.  
Location: ALTCS: Arizona Long-term Care System  
3480 E. Route 66  
Flagstaff, AZ 86004  
Nature: Public Hearing

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

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

**TITLE 9. HEALTH SERVICES**

**CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
CHILDREN'S HEALTH INSURANCE PROGRAM**

**ARTICLE 7. STANDARDS FOR PAYMENTS**

Section  
R9-31-710. ~~Reserved~~ Payments for Non-hospital Services

**ARTICLE 16. SERVICES FOR NATIVE AMERICANS**

Section  
R9-31-1616. Standards for Payments

**ARTICLE 7. STANDARDS FOR PAYMENTS**

**R9-31-710. Reserved Payments for Non-hospital Services**

- A.** Capped Fee for service. The KidsCare services shall be paid in accordance with R9-22-710.
- B.** Pharmacy services. The KidsCare services shall be paid in accordance with R9-22-710.
- C.** The Administration reserves the right to adjust as described under R9-22-710.

**ARTICLE 16. SERVICES FOR NATIVE AMERICANS**

**R9-31-1616. Standards for Payments**

- A.** The Administration has no financial responsibility for services provided to a member beyond the effective date of termination of a member's eligibility. A contractor has no financial responsibility for services provided to a member beyond the last date of enrollment except as provided in Articles 2 and 5 of Chapter 22 of this Title, and as specified in contract.
- B.** The Administration shall make payments to IHS or a Tribal Facility as required under A.R.S. 36-2987(A).
- C.** The Administration shall pay inpatient and outpatient hospital services rendered by a provider under referral from the IHS or a Tribal Facility provider based on A.R.S. §§ 36-2987, 36-2904, 36-2903.01, ~~A.A.C. R9-22-712, and A.A.C. R9-22-7189~~ A.A.C. 22, Article 7, as applicable. Discounts and penalties are specified in A.R.S. § 36-2987(C).
- D.** The Administration shall pay for non-hospital services as described under R9-22-710.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 15. REVENUE**

**CHAPTER 2. DEPARTMENT OF REVENUE  
INCOME AND WITHHOLDING TAX SECTION**

[R05-46]

**PREAMBLE**

- 1. Section Affected**

R15-2C-501	<b><u>Rulemaking Action</u></b>
R15-2C-502	Amend
R15-2C-603	Amend
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statute the rule is implementing (specific):**

Authorizing statute: A.R.S. § 42-1005  
Implementing statute: A.R.S. § 43-1071; A.R.S. § 43-1072; A.R.S. § 43-1096
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 11 A.A.R. 701, February 11, 2005
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Dan Jensen, Tax Analyst  
Address: Tax Policy and Research Division  
Arizona Department of Revenue  
1600 W. Monroe, Room 810  
Phoenix, AZ 85007  
Telephone: (602) 716-6377  
Fax: (602) 716-7995  
E-mail: DJensen@azdor.gov

Please visit the ADOR Web site to track the progress of these rules and other agency rulemaking matters at [www.azdor.gov/tra/draftdoc.htm](http://www.azdor.gov/tra/draftdoc.htm).
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**

The rules provide guidance on the requirements and procedures for resident and nonresident taxpayers to claim the credit against Arizona income taxes for income taxes paid to another state or country pursuant to A.R.S. §§ 43-1071 and 43-1096, as well as the credit available for property taxes pursuant to A.R.S. § 43-1072. The changes amend and

Notices of Proposed Rulemaking

remove rule language that is ambiguous, outdated, or otherwise inaccurate in explaining the Department's position on the applicable credits.

**6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not 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:**

None

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule 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 agency expects that the benefits of the amended rules to the public and the agency from achieving a better understanding of the rules will be greater than the costs. Because the amendments clarify and more accurately explain the scope and nature of each credit a minimal impact may occur for those affected taxpayers due to increased compliance measures. However, making the rules more understandable will allow affected taxpayers to more easily and properly compute their applicable credits.

The proposed amendments to these rules may save the Department costs associated with explaining the scope and proper calculation of these credits. These rules may also have an impact on the amount of Department audits and contested cases that go before the Office of Administrative Hearings.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Dan Jensen, Tax Analyst  
Address: Tax Policy and Research Division  
Arizona Department of Revenue  
1600 W. Monroe, Room 810  
Phoenix, AZ 85007  
Telephone: (602) 716-6377  
Fax: (602) 716-7995  
E-mail: DJensen@azdor.gov

**10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

No oral proceeding is scheduled. Under A.R.S. § 41-1023(C), an oral proceeding will be scheduled if a written request is submitted to the person identified in item #4 within 30 days after publication of this notice.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

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

TITLE 15. REVENUE

CHAPTER 2. DEPARTMENT OF REVENUE  
INCOME AND WITHHOLDING TAX SECTION

ARTICLE 5. CREDITS

Section

R15-2C-501. Credit for Net Income Taxes Paid to Another State or Country by an Arizona Resident

R15-2C-502. Property Tax Credit

ARTICLE 6. NONRESIDENTS

Section

R15-2C-603. Credit for Income Taxes Paid to Another State or Country by a Non-Resident

ARTICLE 5. CREDITS

**R15-2C-501. Credit for Net Income Taxes Paid to Another State or Country by an Arizona Resident**

- A. For purposes of this ~~rule~~ Section, the following definitions apply:
1. "Arizona income tax liability" means the Arizona income tax imposed on the entire income upon which Arizona tax is imposed minus the sum of:
    - a. The clean elections fund tax reduction taken under A.R.S. § 16-954; and
    - b. Any Arizona income tax credits claimed for the taxable year, except the credit for taxes paid to another state.
  2. "Composite income tax return" means a single income tax return filed to another state which represents the interests of and is filed on behalf of all or a portion of the individual a group of individuals that are members of a the taxable entity which, normally would pass through applicable income and deductions to the individual members. A partnership or S corporation would is generally be considered the type of entity to file that files a composite return on behalf of its members.
  23. "Income subject to tax Entire income upon which Arizona tax is imposed" means Arizona adjusted gross income, or the equivalent thereof, as calculated pursuant to computed under A.R.S. § 43-1001, but not including allowable exemptions as delineated in allowed under A.R.S. § 43-1023.
  4. "Entire income upon which the other state's tax is imposed" means the other state's income computed under the equivalent of A.R.S. § 43-1094, but not including exemptions allowable under the equivalent of A.R.S. § 43-1023.
  5. "Income subject to tax by both Arizona and the other state" means that portion of the income included in entire income upon which Arizona tax is imposed that is also included in entire income upon which the other state's tax is imposed. The taxpayer shall increase or reduce the amount included in entire income upon which Arizona tax is imposed by related additions under A.R.S. § 43-1021 and by related subtractions under A.R.S. § 43-1022. The taxpayer shall increase or reduce the amount included in entire income upon which the other state's tax is imposed by related additions and subtractions under the equivalent of A.R.S. § 43-1021 and 43-1022.
  - 3.6. "Net income tax" means a tax which that grants deductions or exemptions from gross income. A system of taxation which that assesses taxes on gross income, gross receipts, or gross dividends does not qualify for the credit is not a net income tax. Payroll taxes Taxes withheld from income do not constitute a net income tax. "Net income tax" includes any tax imposed by another country that qualifies for a credit under Internal Revenue Code §§ 901 and 903.
  7. "Net income tax liability of the other state" means the other state's income tax imposed on the entire income upon which the other state's tax is imposed minus any tax credits claimed against the other state's income tax. The taxpayer shall not take a credit based on interest or penalties paid to another state.
  4. 8. "State" means foreign countries and states, territories, and possessions of the United States but does not include the United States.
- B. ~~A Arizona residents may claim a credit against Arizona income taxes shall be allowed for Arizona residents for net income taxes imposed by and paid to another state if the following criteria are met:~~
1. ~~Income taxed in Arizona is derived from sources within another state; and is subject to a net income tax in the~~
  2. The other state subjects the income to a net income tax, regardless of the residence of the taxpayer; and
  - 2.3. ~~The other state does not allow a credit to Arizona residents against the net income tax imposed on income subject to tax in Arizona and the other state.~~
- C. ~~The amount of credit for taxes paid to another state shall be limited to is the lesser of the Arizona income tax which liability that relates to the income subject to tax by both Arizona and the other state or the net income tax liability of the other state which that relates to the income subject to tax by both Arizona and the other state.~~
1. ~~The Arizona income tax which liability that relates to the income subject to tax by both Arizona and the other state shall be calculated by dividing is the amount of the income subject to tax in both Arizona and the other state, divided by the entire income subject to upon which Arizona tax and multiplying the resulting ratio times is imposed, multiplied by the Arizona income tax liability.~~
  2. ~~The net income tax liability of the other state which that relates to the income subject to tax by both Arizona and the other state shall be calculated by dividing is the amount of the income subject to tax in both Arizona and the other state, divided by the entire income subject to tax in the other state and multiplying the resulting ratio times upon which the other state's tax is imposed, multiplied by the net income tax liability of the other state.~~
3. ~~D. The credit is limited to net income taxes and shall not be taken based on interest or penalties paid to another state. The credit taxpayer shall not be applied apply the credit against interest or penalties payable to Arizona.~~
4. ~~E. The taxpayer shall apply the allowable credit for net income taxes paid to another state shall be applied only against Arizona income tax for the same taxable year in which the income is subject to tax in the other state.~~
- ~~D. F. A credit for taxes paid to another state shall be allowed to an An individual taxpayer whose income is included in that participates in the filing of a composite income tax return, filed to the other state, may claim a credit for taxes paid to the other state if:~~
1. The taxpayer meets all the requirements under A.R.S. § 43-1071 are met; and
  2. The taxes paid to the other state are imposed upon on and paid directly by the individual taxpayer and not by the

entity.

**G.** ~~Taxes shall be considered~~ For purposes of subsection (F), the Department shall consider taxes to be paid directly by the individual if:

1. ~~the~~ The individual taxpayer makes direct remittance payment to the other state; ~~or~~
2. The individual makes direct payment to the entity filing the composite income tax return; ~~or~~
3. ~~if the~~ The entity charges the individual's loan account for the amount of the tax; ~~or~~
4. The entity reduces the individual's capital account.

**~~E.H.~~** ~~The~~ Upon request the taxpayer shall provide ~~substantiation for~~ proof of entitlement to the credit and evidence of payment.

1. ~~No credit shall be allowed~~ The Department shall not allow a credit unless such taxes are the taxpayer has paid the taxes to the other state.
2. The taxpayer shall maintain proper documentation to substantiate prove entitlement to such the credit with proper documentation which and shall be available to provide the documentation to the Department upon request.
3. ~~A~~ The taxpayer shall attach a copy of the tax return as submitted to filed with the other state shall be attached to the Arizona income tax return on which the credit is claimed taxpayer claims the credit.

**~~F.I.~~** The taxpayer shall attach the following ~~information~~ to the Arizona income tax return on which the taxpayer claims a credit for ~~tax imposed by and~~ taxes paid to a foreign country is claimed:

1. ~~All information as delineated described in subsection (E) (H). However, a taxpayer that claims a credit for taxes paid to a foreign country for amounts withheld at the source shall attach other documentation showing the amount of tax imposed and paid if the foreign country does not require the taxpayer to file a return.~~
2. ~~A copy of the pertinent provisions of the foreign law under which the tax is imposed;~~
3. ~~In cases where English is not the official language of the foreign country, a translation of all required documentation; and~~
4. ~~Where~~ If the tax is paid in a foreign currency, a statement substantiating the conversion rate on the date of payment.

**J.** For a credit for taxes paid to a foreign country, the taxpayer shall use the rate of exchange in effect on the date the taxpayer pays the foreign taxes to the foreign country. If the tax was withheld in foreign currency, the taxpayer shall use the rate of exchange in effect on the date on which the tax was withheld. If the taxpayer makes foreign estimated tax payments, the taxpayer shall use the rate of exchange in effect on the date the taxpayer made the estimated tax payment.

#### **R15-2C-502. Property Tax Credit**

**A.** The following definitions apply for purposes of determining ~~the~~ eligibility for, and ~~the~~ amount of, a property tax credit.

1. "Adjusted gross income" means the sum of all income not specifically excluded in A.R.S. § 43-1072 whether or not subject to Arizona income tax, except those items ~~which are that A.R.S. § 43-1072 specifically included~~ includes in income as defined in A.R.S. § 43-1072.
2. "Member of the household" means the claimant and any other person residing with the claimant in the homestead during the taxable year, whether or not the person is related to, or a dependent of, the claimant.

**B.** Household income determines ~~the~~ eligibility for, and ~~the~~ amount of, a property tax credit. ~~Household income shall be arrived at~~ A claimant shall arrive at household income by combining the separately determined income, as separately determined, of each member of the household.

**C.** For purposes of arriving at adjusted gross income ~~for each member of the household, all of the following shall rules apply:~~

1. Income from business or farm activities ~~shall be calculated as is~~ net income or loss from business or farm activities, determined in the same manner as income or loss reportable for federal income tax purposes;
2. Income from rents or royalties ~~shall be calculated as is~~ gross income from rent or royalty activities less deductions ~~as, determined in the same manner as income or loss~~ reportable for federal income tax purposes; and
3. Income from capital gains ~~shall be calculated by netting is the net~~ capital gains and losses for each member of the household. ~~A net loss shall be limited to \$1,500. Net losses are limited to \$1,500 for each household member.~~

**D.** ~~Only 1 property tax credit is allowed~~ There shall be only 1 claimant per household per year for property taxes paid on the homestead or for the portion of rental payments representing property taxes paid on the homestead or both.

**E.** ~~Substantiation for the credit shall be submitted to the Department as follows:~~ If the claimant files a property tax credit claim, the claimant shall attach the following documents to the claim as applicable:

1. If the claimant owns a home is owned by the claimant, a copy of the property tax statement indicating the amount of taxes paid for the tax year, the property tax bill stamped paid, or copies of the cancelled checks ~~along with and~~ a copy of the property tax bill.
2. If the claimant is a resident of a nursing home, or is a renter, a copy of the completed Arizona Form ~~RPTC 201~~.
3. If the claimant owns a mobile home and pays rent on a mobile home space, a copy of the completed Arizona Form ~~RPTC 201~~ and a copy of the property tax statement, indicating the amount of taxes paid on the mobile home for the tax year, the property tax bill stamped paid, or copies of cancelled checks ~~along with and~~ a copy of the property tax bill.
4. If the claimant is a shareholder of a cooperative corporation or a condominium association, a statement of the claimant's pro rata share of the assessed property taxes and a copy of either:

- a. The mortgage company statement of a the corporation or association indicating the total amount of property taxes paid; or
  - b. A copy of the tax bill of the corporation or association stamped paid.
5. If the claimant received Title 16 Supplemental Security Income payments, a statement from the Social Security Administration indicating the amount of benefits for the current tax year.

ARTICLE 6. NONRESIDENTS

**R15-2C-603. Credit for Income Taxes Paid to Another State or Country by a Non-Resident**

- A. For purposes of this ~~rule~~ Section, the following definitions apply:
1. “Arizona income tax liability” means the Arizona income tax imposed on the entire income upon which Arizona tax is imposed minus the sum of:
    - a. The clean elections fund tax reduction taken under A.R.S. § 16-954; and
    - b. Any Arizona income tax credits claimed for the taxable year, except the credit for taxes paid to another state.
  2. “Composite income tax return” means a single income tax return filed by a partnership or S corporation to Arizona on behalf of a group of Arizona nonresident individuals.
  3. “Income subject to tax Entire income upon which Arizona tax is imposed” means Arizona adjusted gross income, or the equivalent thereof, as calculated pursuant to computed under A.R.S. § 43-1001 43-1094, but not including allowable exemptions as delineated in allowed under A.R.S. § 43-1023.
  4. “Entire income upon which the other state’s tax is imposed” means the other state’s income computed under the equivalent of A.R.S. § 43-1001, but not including exemptions allowable under the equivalent of A.R.S. § 43-1023.
  5. “Income subject to tax by both Arizona and the other state” means that portion of the income included in entire income upon which Arizona tax is imposed that is also included in entire income upon which the other state’s tax is imposed. The taxpayer shall increase or reduce the amount included in entire income upon which Arizona tax is imposed by related additions under A.R.S. § 43-1021 and by related subtractions under A.R.S. § 43-1022. The taxpayer shall increase or reduce the amount included in entire income upon which the other state’s tax is imposed by related additions and subtractions under any equivalent of A.R.S. § 43-1021 and 43-1022.
  - 2-6. “Net income tax” means a tax which that grants deductions or exemptions from gross income. A system of taxation which that assesses taxes on gross income, gross receipts, or gross dividends does not qualify for the credit is not a net income tax. Payroll taxes Taxes withheld from income do not constitute a net income tax. “Net income tax” includes any tax imposed by another country that qualifies for a credit under Internal Revenue Code §§ 901 and 903.
  7. “Net income tax liability of the other state” means the other state’s income tax imposed on the entire income upon which the other state’s tax is imposed minus any tax credits claimed against the other state’s income tax. The taxpayer shall not take a credit based on interest or penalties paid to another state.
  - 3-8. “State” means foreign countries and states, territories, and possessions of the United States but does not include the United States.
- B. A nonresident of Arizona may claim a credit against Arizona income taxes shall be allowed for nonresidents of Arizona who are if the nonresident is not allowed a credit by their the state of residence for taxes paid to Arizona if and either of the following criteria is met apply:
1. The other state does not tax Arizona residents on income derived from sources within the other state.
  2. The other state allows Arizona residents credit for taxes paid on income subject to tax by the other state and Arizona.
- C. ~~Nonresidents who participate~~ A nonresident that participates in the filing of a composite income tax return, ~~as defined in R15-2-1071,~~ to Arizona shall not be allowed claim a credit for taxes paid to another state.
- D. The amount of credit for taxes paid to another state ~~shall be limited to~~ is the lesser of the Arizona income tax ~~which liability that~~ relates to the income subject to tax by both Arizona and the other state or the net income tax liability of the other state ~~which that~~ relates to the income subject to tax by both Arizona and the other state.
1. The Arizona income tax ~~which liability that~~ relates to the income subject to tax by both Arizona and the other state ~~shall be calculated by dividing~~ is the amount of the income subject to tax in both Arizona and the other state, divided by the entire income subject to upon which Arizona tax ~~and multiplying the resulting ratio times~~ is imposed, multiplied by the Arizona income tax liability.
  2. The net income tax liability of the other state ~~which that~~ relates to the income subject to tax by both Arizona and the other state ~~shall be calculated by dividing~~ is the amount of the income subject to tax in both Arizona and the other state, divided by the entire income subject to tax in the other state and multiplying the resulting ratio times upon which the other state’s tax is imposed, multiplied by the net income tax liability of the other state.
  3. The credit is limited to net income taxes ~~and shall not be taken based on interest or penalties paid to another state.~~ The ~~credit taxpayer~~ shall not be applied apply the credit against interest or penalties payable to Arizona.
  4. The taxpayer shall apply the allowable credit for net income taxes paid to another state ~~shall be applied~~ only against Arizona income tax for the same taxable year in which the income is subject to tax in the other state.
- E. ~~Documentation to substantiate the credit shall be attached to the Arizona personal income tax return on which the credit is~~

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claimed pursuant to the provisions in subsections R15-2C-501(E) and (F).

- E.** Upon request the taxpayer shall provide proof of entitlement to the credit and evidence of payment.
  - 1. The Department shall not allow a credit unless the taxpayer has paid the taxes to the other state.
  - 2. The taxpayer shall maintain proper documentation to prove entitlement to the credit and shall provide the documentation to the Department upon request.
  - 3. The taxpayer shall attach a copy of the tax return filed with the other state to the Arizona income tax return on which the taxpayer claims the credit.
- F.** The taxpayer shall attach the following to the Arizona income tax return on which the taxpayer claims a credit for taxes paid to a foreign county:
  - 1. All information described in subsection (H). However, a taxpayer that claims a credit for taxes paid to a foreign country for amounts withheld at the source shall attach other documentation showing the amount of tax imposed and paid if the foreign country does not require the taxpayer to file a return.
  - 2. If the tax is paid in a foreign currency, a statement substantiating the conversion rate on the date of payment.
- G.** For a credit for taxes paid to a foreign country, the taxpayer shall use the rate of exchange in effect on the date the taxpayer pays the foreign taxes to the foreign country. If the tax was withheld in foreign currency, the taxpayer shall use the rate of exchange in effect on the date the tax was withheld. If the taxpayer makes foreign estimated tax payments, the taxpayer shall use the rate of exchange in effect on date the taxpayer made the estimated tax payment.