

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 9. HEALTH SERVICES

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

[R08-398]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R9-8-701 | Amend |
| R9-8-710 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. §§ 36-104(1)(b)(i), 36-136(A)(7), 36-136(F)
Implementing statutes: A.R.S. § 36-136(H)(9)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 14 A.A.R. 3186, August 8, 2008
Notice of Rulemaking Docket Opening: 14 A.A.R. 4420, November 28, 2008 (*in this issue*)
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|--|
| Name: | Elisabeth Lawaczek, DVM, State Public Health Veterinarian |
| Address: | Department of Health Services
Office of Infectious Disease Services
150 N. 18th Ave., Suite 140
Phoenix, AZ 85007 |
| Telephone: | (602) 364-4562 |
| Fax: | (602) 364-3198 |
| E-mail: | lawacze@azdhs.gov |
| or | |
| Name: | Kathleen Phillips, Esq.
Administrative Counsel and Rules Administrator |
| Address: | Department of Health Services
Office of Administrative Counsel and Rules
1740 W. Adams St., Suite 200
Phoenix, AZ 85007 |
| Telephone: | (602) 542-1264 |
| Fax: | (602) 364-1150 |
| E-mail: | phillik@azdhs.gov |

Notices of Proposed Rulemaking

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

The purpose of this rulemaking is to amend the rules for public schools in 9 A.A.C. 8, Article 7. Due to the danger of rabies transmission posed by bats found by children attending public schools, the Department is amending R9-8-710 to require that indoor and exterior areas of public schools are kept free of roosting bats. The Department is also amending R9-8-710 to require that, if bats are found roosting in the interior of structures on public school premises, they are removed by an Arizona Game and Fish Department Wildlife Service licensee, and if bats are found roosting on the exterior of a structure on public school premises, the school consults with the Arizona Game and Fish Department to receive direction on techniques the school can use to discourage roosting on the exterior of a structure. The amended rules also require that if bats are roosting in a bat house authorized by the school to be on school premises, the bat house is inaccessible to students. The Department is amending the definitions in R9-8-701 to reflect the changes made to the Article.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes 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:

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:

Cost bearers include the Department, county health departments, and public schools, including charter schools. The Department will bear minimal costs for preparing and promulgating the rules. County health departments will bear minimal costs to begin looking for evidence of roosting bats when performing school sanitary inspections. Public schools will bear minimal to substantial costs for keeping school facilities free of roosting bats.

The primary beneficiaries will be students, faculty, staff, and visitors at Arizona public schools, who will benefit from a decreased risk of rabies exposure if bats are not allowed to roost at public schools. A decreased risk of rabies, as well as a decreased need for post-exposure prophylaxis due to decreased exposure to potentially rabid bats, will improve Arizona's public health, resulting in minimal to substantial savings by reducing health care expenditures and the burden on the health care system. Other beneficiaries include businesses that are licensed to provide wildlife services by the Arizona Game and Fish Department, which may experience minimal to substantial increased revenues by contracting with public schools to perform bat abatement and exclusion.

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: Elisabeth Lawaczek, DVM, State Public Health Veterinarian

Address: Department of Health Services
Office of Infectious Disease Services
150 N. 18th Ave., Suite 140
Phoenix, AZ 85007

Telephone: (602) 364-4562

Fax: (602) 364-3198

E-mail: lawacze@azdhs.gov

or

Name: Kathleen Phillips, Esq.
Administrative Counsel and Rules Administrator

Address: Department of Health Services
Office of Administrative Counsel and Rules
1740 W. Adams St., Suite 200
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: phillik@azdhs.gov

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: January 5, 2009

Time: 2:00 p.m.

Notices of Proposed Rulemaking

Location: 1740 W. Adams St., Room 309
Phoenix, AZ 85007

Close of record: 5:00 p.m., January 5, 2009

A person may submit written comments on the proposed rules or the preliminary summary of the economic, small business, and consumer impact no later than 5:00 p.m. on January 5, 2009, to the individuals listed in items 4 and 9. Persons with a disability may request reasonable accommodations by contacting Elizabeth Roig at roige@azdhs.gov or (602) 364-3959. Requests should be made as early as possible to allow sufficient time to arrange for the accommodation.

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

Not applicable

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

Not applicable

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION**

ARTICLE 7. PUBLIC SCHOOLS

Section

R9-8-701. Definitions
R9-8-710. Pest Control

ARTICLE 7. PUBLIC SCHOOLS

R9-8-701. Definitions

In this Article, unless otherwise specified:

1. No change
- a. No change
- b. No change
2. No change
3. No change
4. “Bat house” means a structure specifically designed by the manufacturer for bats to roost in.
- ~~4-5.~~ No change
- ~~5-6.~~ No change
- ~~6-7.~~ No change
- ~~7-8.~~ No change
- ~~8-9.~~ No change
- ~~9-10.~~ No change
- ~~10-11.~~ No change
- ~~11-12.~~ No change
- ~~12-13.~~ No change
- a. No change
- b. No change
- c. No change
- ~~13-14.~~ No change
- ~~14-15.~~ No change
- ~~15-16.~~ No change
- ~~16-17.~~ No change
- ~~17-18.~~ No change
- ~~18-19.~~ No change
- ~~19-20.~~ No change
- ~~20-21.~~ No change
22. “Exclusion” means the process of preventing bats from roosting in a structure by:

Notices of Proposed Rulemaking

- a. Placing one-way devices at all entry points where bats are known to enter the structure.
 - b. Allowing all bats to exit the structure for a minimum of five days.
 - c. Removing all one-way devices once all bats have left the structure, and
 - d. Sealing all entry points.
- ~~21-23.~~ No change
- ~~22-24.~~ No change
- ~~23-25.~~ No change
- ~~24-26.~~ No change
- ~~25-27.~~ “Habitat” means a place where an animal is kept while on school grounds premises.
- ~~26-28.~~ No change
- ~~27-29.~~ No change
- ~~28-30.~~ No change
- ~~29-31.~~ No change
- ~~30-32.~~ No change
- a. No change
 - b. No change
- ~~33.~~ “Manage” means to direct the use of.
- ~~34-34.~~ No change
- ~~32-35.~~ No change
- ~~33-36.~~ No change
- ~~37.~~ “One-way device” means an apparatus which allows bats to exit a structure but prevents bat re-entry.
- ~~34-38.~~ No change
- ~~39.~~ “Own” means to have the right to possess, use, and convey the interest in.
- ~~35-40.~~ No change
- a. No change
 - b. No change
- ~~41.~~ “Pest” means animals such as rodents, bats, and insects that may be injurious to humans.
- ~~36-42.~~ No change
- ~~37-43.~~ No change
- ~~38-44.~~ No change
- ~~39-45.~~ No change
- ~~40-46.~~ No change
- ~~41-47.~~ No change
- ~~42-48.~~ No change
- a. No change
 - b. No change
 - c. No change
 - d. No change
- ~~43-49.~~ No change
- ~~50.~~ “Roosting” means resting or sleeping in an area for more than 24 hours or returning to an area to rest or sleep more than once.
- ~~44-51.~~ No change
- ~~45-52.~~ No change
- ~~46-53.~~ No change
- a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - b. No change
- ~~54.~~ “School premises” means all land owned or managed by a school which students have access to and the interior and exterior of all buildings located on that land.
- ~~47-55.~~ No change
- ~~48-56.~~ No change
- ~~49-57.~~ No change
- ~~50-58.~~ No change
- a. No change
 - b. No change
 - c. No change

~~51-59~~. No change

~~52-60~~. No change

~~53-61~~. No change

~~54-62~~. No change

R9-8-710. Pest Control

A responsible person shall ensure that:

1. ~~Indoor classroom~~ Classroom and non-classroom areas are kept free of insects and rodents except when the insects or rodents are being kept as specified in R9-8-709 or are food for animals being kept as specified in R9-8-709;
2. If bats are roosting:
 - a. In the interior of a structure on school premises, after consultation by the school with the regional office of the Arizona Game and Fish Department, exclusion of the bats is performed by an Arizona Game and Fish Department Wildlife Service licensee as provided in A.A.C. R12-4-421;
 - b. On the exterior of a structure on school premises, the school consults with the regional office of the Arizona Game and Fish Department in order to receive direction on techniques the school can use to discourage roosting on the exterior of a structure; and
 - c. In a bat house authorized by the school to be on school premises, the bat house is inaccessible to students.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

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

[R08-400]

PREAMBLE

1. **Sections Affected**
R9-22-214
1. **Rulemaking Action**
New Section
2. **The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: Laws 2008, Ch. 285 § 3
Implementing statute: Laws 2008, Ch. 285 § 3
3. **A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 14 A.A.R. 4192, November 7, 2008
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 St., Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 253-9115
E-mail: AHCCCSRules@azahcccs.gov
5. **An explanation of the rule, including the agency's reasons for initiating the rule:**
The legislature, in HB2209 General Appropriations, has provided funding to provide hospice service coverage for adults receiving acute care services. As a result of this funding, the Administration is proposing a rule amendment.
6. **A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
The Administration did not use or rely on any studies relating to this rule.

Notices of Proposed Rulemaking

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 Administration expects a minimal economic impact on those parties affected by this rulemaking.

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 St., Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 253-9115
E-mail: AHCCCSRules@azahcccs.gov

Proposed rule language will be available on the AHCCCS web site www.azahcccs.gov the week of November 10, 2008. Please send written comments to the above address by 5:00 p.m., January 13, 2009. E-mail comments will also be accepted during this time-frame.

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: January 13, 2009

Time: 2:00 p.m.

Location: AHCCCS
701 E. Jefferson St.
Phoenix, AZ 85034

Nature: Public Hearing

Date: January 13, 2009

Time: 2:00 p.m.

Location: ALTCS: Arizona Long-term Care System
1010 N. Finance Center Drive, Suite 201
Tucson, AZ 85710

Nature: Public Hearing

Date: January 13, 2009

Time: 2:00 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:

R9-22-214 (C), 42 CFR 418.202, October 1, 2006

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION

ARTICLE 2. SCOPE OF SERVICES

Section

R9-22-214. ~~Repealed~~ Hospice Services

ARTICLE 2. SCOPE OF SERVICES

R9-22-214. ~~Repealed~~ Hospice Services

- A.** Hospice services are covered for all acute care members.
- B.** Hospice services are covered only for a member who is in the final stages of a terminal illness and has a prognosis of death within six months.
- C.** Hospice services are limited to those allowable under 42 CFR 418.202, October 1, 2006, incorporated by reference and on file with the Administration. This incorporation by reference contains no future editions or amendments.
- D.** The following services are not included in Hospice services:
1. Medical services provided that are not related to the terminal illness.
 2. Home-delivered meals, and
 3. Hospice services that are provided and covered through Medicare.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION

[R08-402]

PREAMBLE

- | | |
|--|--|
| 1. <u>Sections Affected</u>
R9-22-1414 | <u>Rulemaking Action</u>
Amend |
|--|--|
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 36-2901.03
Implementing statute: A.R.S. § 36-2901.03
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 14 A.A.R. 4192, November 7, 2008
- 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 St., Mail Drop 6200
Phoenix, AZ 85034 |
| Telephone: | (602) 417-4693 |
| Fax: | (602) 253-9115 |
| E-mail: | AHCCCSRules@azahcccs.gov |
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
HB 2275 updated A.R.S. § 36-2901.03(F) with the requirement that the Administration shall determine the continued eligibility every six months for any adult without dependent children. The Administration is proposing rule changes accordingly.
- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not to rely**

Notices of Proposed Rulemaking

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 study was reviewed during this rulemaking and the Agency does not anticipate reviewing any studies.

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:

It is anticipated that the contractors, private sector, members, providers, small businesses, political subdivisions, the Department, and the Administration will have a minimal to no economic impact by the changes within this rulemaking.

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 St., Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 253-9115
E-mail: AHCCCSRules@azahcccs.gov

Proposed rule language will be available on the AHCCCS web site www.azahcccs.gov the week of November 10, 2008. Please send written comments to the above address by 5:00 p.m., January 13, 2009. E-mail comments will also be accepted during this time-frame.

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: January 13, 2009
Time: 2:00 p.m.
Location: AHCCCS
701 E. Jefferson St.
Phoenix, AZ 85034
Nature: Public Hearing

Date: January 13, 2009
Time: 2:00 p.m.
Location: ALTCS: Arizona Long-term Care System
1010 N. Finance Center Drive, Suite 201
Tucson, AZ 85710
Nature: Public Hearing

Date: January 13, 2009
Time: 2:00 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 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION**

ARTICLE 14. AHCCCS MEDICAL COVERAGE FOR FAMILIES AND INDIVIDUALS

Section

R9-22-1414. Review of Eligibility

ARTICLE 14. AHCCCS MEDICAL COVERAGE FOR FAMILIES AND INDIVIDUALS

R9-22-1414. Review of Eligibility

- A. Except as provided in subsection (B), the Department shall complete a review of each member's continued eligibility for AHCCCS medical coverage at least once every 12 months.
- B. The Department shall complete a review of eligibility for a:
 - 1. Pregnant woman determined eligible under R9-22-1428(2) following the termination of her pregnancy,
 - 2. ~~Non-pregnant member approved only for Federal Emergency Services at least once in a six-month period,~~
 - 2. Adults without children as described under A.R.S. § 36-2901.03(F) at least once in a six-month period.
 - 3. Member approved for the MED program under R9-22-1435 through R9-22-1440 before the end of the six-month eligibility period,
 - 4. Any time there is a change in a member's circumstance that may affect eligibility.
- C. If a member continues to meet all eligibility requirements and conditions of eligibility, the Department shall authorize continued eligibility and notify the member of continued eligibility. If the member continues to be eligible for Federal Emergency Services, the notice shall state that the continued eligibility is for Federal Emergency Services only.
- D. The Department shall discontinue eligibility and notify the member of the discontinuance under R9-22-1415 if the member:
 - 1. Fails to comply with the review of eligibility,
 - 2. Fails to comply with the requirements and conditions of eligibility under this Article without good cause under 42 CFR 433.148, or
 - 3. Does not meet the eligibility requirements.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

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

[R08-399]

PREAMBLE

- 1. **Sections Affected** **Rulemaking Action**
R9-28-206 Amend
- 2. **The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: Laws 2008, Ch. 285 § 3
Implementing statute: Laws 2008, Ch. 285 § 3
- 3. **A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 14 A.A.R. 4193, November 7, 2008
- 4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Mariaelena Ugarte

Notices of Proposed Rulemaking

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

Telephone: (602) 417-4693

Fax: (602) 253-9115

E-mail: AHCCCSRules@azahcccs.gov

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

The legislature, in HB2209 General Appropriations, has provided funding to provide hospice service coverage for adults receiving acute care services. As a result of this funding, the Administration is proposing a rule amendment.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Administration did not use or rely on any studies relating to this rule.

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 Administration expects a minimal to no economic impact on those parties affected by this rulemaking.

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 St., Mail Drop 6200
Phoenix, AZ 85034

Telephone: (602) 417-4693

Fax: (602) 253-9115

E-mail: AHCCCSRules@azahcccs.gov

Proposed rule language will be available on the AHCCCS web site www.azahcccs.gov the week of November 10, 2008. Please send written comments to the above address by 5:00 p.m., January 13, 2009. E-mail comments will also be accepted during this time-frame.

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: January 13, 2009

Time: 2:00 p.m.

Location: AHCCCS
701 E. Jefferson St.
Phoenix, AZ 85034

Nature: Public Hearing

Date: January 13, 2009

Time: 2:00 p.m.

Location: ALTCS: Arizona Long-term Care System
1010 N. Finance Center Drive, Suite 201
Tucson, AZ 85710

Nature: Public Hearing

Date: January 13, 2009

Notices of Proposed Rulemaking

Time: 2:00 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 2. COVERED SERVICES

Section

R9-28-206. ALTCS Services that may be Provided to a Member Residing in either an Institutional or HCBS Setting

ARTICLE 2. COVERED SERVICES

R9-28-206. ALTCS Services that may be Provided to a Member Residing in either an Institutional or HCBS Setting

The Administration shall cover the following services if the services are provided to a member within the limitations listed:

1. Occupational and physical therapies, speech and audiology services, and respiratory therapy:
 - a. The duration, scope, and frequency of each therapeutic modality or service is prescribed by the member's primary care provider or attending physician;
 - b. The therapy or service is authorized by the member's contractor or the Administration; and
 - c. The therapy or service is included in the member's case management plan.
2. Medical supplies, durable medical equipment, and customized durable medical equipment, which conform with the requirements and limitations of 9 A.A.C. 22, Article 2;
3. Ventilator dependent services:
 - a. Inpatient or institutional services are limited to services provided in a general hospital, special hospital, NF, or ICF-MR. Services provided in a general or special hospital are included in the hospital's unit tier rate under 9 A.A.C. 22, Article 7;
 - b. A ventilator dependent member may receive the array of home and community based services under R9-28-205 as appropriate.
4. Hospice services: service as described under A.A.C. R9-22-214.
 - a. ~~Hospice services are covered only for a member who is in the final stages of a terminal illness and has a prognosis of death within six months;~~
 - b. ~~Covered hospice services for a member are those allowable under 42 CFR 418.202, December 20, 1994, 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; and~~
 - e. ~~Covered hospice services do not include:~~
 - i. ~~Medical services provided that are not related to the terminal illness; or~~
 - ii. ~~Home delivered meals.~~
 - d. ~~Medicare is the primary payor of hospice services for a member if applicable.~~

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

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

[R08-401]

PREAMBLE

- 1. Sections Affected**

	<u>Rulemaking Action</u>
R9-31-303	Amend
Article 4	New Section
R9-31-401	New Section
R9-31-402	New Section
R9-31-403	New Section
R9-31-404	New Section
R9-31-405	New Section
R9-31-406	New Section
R9-31-407	New Section
R9-31-408	New Section
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 36-2982 and 36-2983
Implementing statute: A.R.S. §§ 36-2982 and 36-2983
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 14 A.A.R. 3129, August 1, 2008
- 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 St., Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 253-9115
E-mail: AHCCCSRules@azahcccs.gov
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**

As a result of Legislation 2007, A.R.S. § 36-2982(I) permits the Administration to implement the Employer Sponsored Insurance Program. The Administration is proposing rule language describing the requirements for this program. It is a voluntary program that will be made available to families of Kids Care eligible children, who have access to employer sponsored health insurance. If the family chooses the ESI program, the Administration will subsidize the ESI premium.
- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes 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:**

No study was reviewed or relied upon for this rulemaking.
- 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 Administration anticipates that there will be a minimal economic impact as a result of the rule changes.
- 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

Notices of Proposed Rulemaking

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

Telephone: (602) 417-4693

Fax: (602) 253-9115

E-mail: AHCCCSRules@azahcccs.gov

Proposed rule language will be available on the AHCCCS web site www.azahcccs.gov the week of November 10, 2008. Please send written comments to the above address by 5:00 p.m., January 13, 2009. E-mail comments will also be accepted during this time-frame.

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: January 13, 2009

Time: 2:00 p.m.

Location: AHCCCS
701 E. Jefferson St.
Phoenix, AZ 85034

Nature: Public Hearing

Date: January 13, 2009

Time: 2:00 p.m.

Location: ALTCS: Arizona Long-term Care System
1010 N. Finance Center Drive, Suite 201
Tucson, AZ 85710

Nature: Public Hearing

Date: January 13, 2009

Time: 2:00 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 3. ELIGIBILITY AND ENROLLMENT

Section
R9-31-303. Eligibility Criteria

ARTICLE 4. ~~REPEALED~~ EMPLOYER SPONSORED INSURANCE SUBSIDY PROGRAM

Notices of Proposed Rulemaking

Section

- R9-31-401. ~~Repeated~~ Definitions Related to the Employer Sponsored Insurance Subsidy Program
- R9-31-402. ~~Repeated~~ General Requirements
- R9-31-403. ~~Repeated~~ Eligibility Requirements
- R9-31-404. ~~Repeated~~ Effective Date
- R9-31-405. ~~Repeated~~ Member Responsibilities
- R9-31-406. ~~Repeated~~ Employer Responsibilities
- R9-31-407. ~~Repeated~~ Premiums and ESI Subsidy Payments
- R9-31-408. ~~Repeated~~ Hearing Rights and Continuation of Benefits for the ESI Program

ARTICLE 3. ELIGIBILITY AND ENROLLMENT

R9-31-303. Eligibility Criteria

Eligibility. To be eligible for the program, an applicant shall meet all the following eligibility requirements:

1. Age. Is less than 19 years of age. A child's coverage shall continue through the month in which a child turns age 19 if the child is otherwise eligible;
2. Citizenship. Is a United States citizen or a qualified alien under A.R.S. § 36-2983;
3. Residency. Is a resident of the state of Arizona under A.R.S. § 36-2983. An Arizona resident is a person who currently lives in Arizona and intends to remain in Arizona indefinitely;
4. Income. Meets the income requirements in R9-31-304;
5. Cost sharing. Pays the cost sharing premium amount when premiums are required as specified in A.R.S. §§ 36-2982 and 36-2903.01;
6. Social security ~~Security~~ Security number (SSN). Provides a SSN or applies for a SSN within 30 days after submitting an application.
7. Assignment. Assigns rights to any first- or third-party coverage of medical care as specified in 9 A.A.C. 31, Article 10;
8. Other federal program. Is not eligible for Medicaid or other federally operated or financed health care insurance program, except the Indian Health Service as specified in A.R.S. § 36-2983;
9. Inmate of a public institution. Is not an inmate of a public institution, as specified in A.R.S. § 36-2983;
10. Patient in an institution for mental disease. Is not a patient in an institution for mental disease at the time of application, or at the time of redetermination, as specified in A.R.S. § 36-2983;
11. Other health coverage. Is not covered under:
 - a. An employer's group health insurance plan,
 - b. Family or individual health insurance, or
 - c. Other health insurance;
12. State health benefits. Is not a member of a family that is eligible for health benefits coverage under a state health benefit plan based on a family member's employment with a public agency in the state of Arizona;
13. Prior health insurance coverage. Has not been covered by health insurance during the previous three months unless that health insurance was discontinued due to the involuntary loss of employment or other involuntary reason as specified in A.R.S. § 36-2983. The three months of ineligibility due to previous insurance coverage shall not apply to:
 - a. A newborn as defined in R9-31-309;
 - b. A Title XIX member as specified in 9 A.A.C. 22, Article 1;
 - c. An applicant who is seriously ill under R9-31-101 or chronically ill under A.R.S. § 36-2983;
 - d. A member under this Article who loses insurance coverage;
 - e. A CRS member; ~~or~~
 - f. A Native American member receiving services from IHS or a Tribal Facility; ~~or~~
 - g. A member whose previous coverage was the Employer Sponsored Insurance Program.

ARTICLE 4. ~~REPEALED~~ EMPLOYER SPONSORED INSURANCE SUBSIDY PROGRAM

R9-31-401. ~~Repeated~~ Definitions Related to the Employer Sponsored Insurance Subsidy Program

Definitions. The words and phrases in this Article have the following meanings unless the context explicitly requires another meaning:

"Employer Sponsored Insurance" or "ESI" means health insurance offered by an employer.

"Employer Sponsored Insurance Program" or "ESI Program" means a program where the parent of a Kids Care eligible child may obtain employer sponsored health insurance by choosing coverage for the child under the employer sponsored insurance and have the premium subsidized by this program.

"Employee premium" means a monthly amount the employee is charged by the employer for the employer sponsored insurance.

"Qualifying Employer" means an employer that has a commercial group package that provides, at a minimum, the

Notices of Proposed Rulemaking

required scope of services under R9-31-403 and contributes at least 30% of the total health insurance premium for the household and confirms with AHCCCS the ESI member's enrollment and premium deductions each quarter.

"Subsidy payment" means a payment made by the Administration to the household of the eligible child.

R9-31-402. ~~Repealed~~ General Requirements

- A. The Administration shall administer the Employer Sponsored Insurance Program under A.R.S. §§ 36-2982 and 36-2983.
- B. For households participating in the ESI program, including households with Native American children, the Administration is not responsible for covering services described under R9-31-403, coinsurance, deductibles, or any portion of the employee premium that exceeds the subsidy payment.
- C. Participation in the ESI program is voluntary.

R9-31-403. ~~Repealed~~ Eligibility Requirements

- A. Eligibility Criteria.
 - 1. The household shall include at least one child determined eligible for Kids Care.
 - 2. The qualifying household's employer health insurance shall meet the following requirements:
 - a. Provide the qualifying household at least the following services:
 - i. Inpatient hospital services.
 - ii. Outpatient services.
 - iii. Physician's surgical and medical services.
 - iv. Laboratory and X-ray services.
 - v. Pharmacy services.
 - vi. Well baby/well child visits and immunizations, and
 - vii. Behavioral health services.
 - b. The employer's plan is not required to offer all of the services covered by AHCCCS. Restrictions or limitations on the amount, duration or scope of services, may be greater or less than those imposed by AHCCCS. Coverage of dental, vision and non-emergency transportation are not required.
 - 3. The parents of the eligible child shall accept the subsidy payments by direct deposit into a bank account.
 - 4. Comply with the requirements as described under R9-31-406.
- B. Eligibility Determination.
 - 1. The household shall provide the necessary information to make an ESI program eligibility determination.
 - 2. The Administration shall make an eligibility determination within 45 days from the date the necessary information was received, except when:
 - a. The agency cannot reach a decision because the applicant delays or fails to take a required action, or
 - b. There is an administrative or other emergency beyond the agency's control.
 - 3. The Administration shall not use the time to determine eligibility as a waiting period before determining eligibility; or as a reason for denying eligibility when a determination has not been made within the time standards.
- C. ESI Renewals.
 - 1. Renewals shall be completed at least annually to see if the family still qualifies for Kids Care and the ESI subsidy payment. The ESI renewal process will be scheduled to coincide with the employer's open enrollment period.
 - 2. Renewal application forms will be sent to ESI Program participants at least 60 days before the employer's open enrollment date. If the participant continues to qualify for Kids Care, the family will have the option to:
 - a. Remain enrolled with ESI, provided the employer and the employer's insurance meet the program requirements;
 - or
 - b. Transition back to Kids Care and an AHCCCS health plan.
 - 3. If the member does not return the necessary information to determine eligibility the member will be ineligible for the ESI Program.
 - 4. When a renewal application is processed and the member is found ineligible for Kids Care the subsidy payment will stop.
- D. An ESI Program member's eligibility will not discontinue when a member reports a change that makes the qualified child ineligible for Kids Care. The reported change in circumstances will not affect the ESI eligibility until the child's renewal determination.

R9-31-404. ~~Repealed~~ Effective Date

Effective Date.

- 1. Effective dates are prospective, the 1st of the month following the determination of eligibility.
- 2. When the child is eligible for Kids Care and the parent has decided to enroll in the ESI program, an ESI Specialist will coordinate the ESI effective date, and send the parent an Approval Notice.
- 3. Once the eligibility is effective, the member shall remain in the ESI program until the employer's next open enrollment period, unless:
 - a. AHCCCS does not receive the employer's quarterly verification for the member.

Notices of Proposed Rulemaking

- b. The employer reports that the employer sponsored insurance no longer exists or is no longer available to the member.
- c. The customer is eligible and chooses coverage under Medicaid or Kids Care.
- d. The customer dies or moves out-of-state, or
- e. The customer fails to comply with R9-31-405.

R9-31-405. ~~Repealed~~ Member Responsibilities

Participating members shall report within 10 days of when the change occurs for any of the following changes:

- 1. The employer's health insurance stops covering any of the services under R9-31-403(A)(3)(a).
- 2. The health insurance premium amount.
- 3. The employee changes jobs.
- 5. An eligible child is no longer insured by the employer, and
- 6. Bank account information where the subsidy payments are deposited.

R9-31-406. ~~Repealed~~ Employer Responsibilities

The qualifying employer shall:

- 1. Provide the ESI Program the required information.
- 2. Report to AHCCCS each quarter to confirm:
 - a. The ESI child is still enrolled in the employer's health insurance.
 - b. The premium is still being deducted by the employer.
 - c. The amount of the employer's and employee's share of the health insurance premium, and
 - d. The employer's health insurance still covers the required services.
- 3. Contribute at least 30% of the total health insurance premium.

R9-31-407. ~~Repealed~~ Premiums and ESI Subsidy Payments

- A.** The subsidy payment shall be \$100 per month per eligible child, and shall not exceed the cost of the employee's share of the health insurance premium.
- B.** The subsidy payment is made monthly.
- C.** Any unpaid Kids Care premiums described under R9-31-1402 will be deducted from the subsidy payment.

R9-31-408. ~~Repealed~~ Hearing Rights and Continuation of Benefits for the ESI Program

Hearing rights for an ESI member's eligibility are described in 9 A.A.C. 34.