

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

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 at 15 A.A.R. 1942, November 20, 2009.) The Governor's Office authorized the notice to proceed through the rulemaking process on May 4, 2010.

[R10-86]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R9-28-508 | 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. § 36-2951
Implementing statute: A.R.S. § 36-2951
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 16 A.A.R. 1177, July 2, 2010 (*in this issue*)
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Mariaelena Ugarte
Address: AHCCCS
Office of Administrative Legal Services
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 SB 1329 created A.R.S. § 36-2951 to provide requirements for self-directed attendant care (SDAC) services. The Administration is proposing rule language to describe the requirements a person must follow in order to provide or receive SDAC services.
- 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:**
A study was not referenced or relied upon when evaluating and creating regulations for the SDAC services.
- 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

Notices of Proposed Rulemaking

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

The Administration anticipates a minimal economic impact on the implementing agency, small businesses and consumers. Other attendant care options are available to the member in addition to the Self-Directed Attendant Care services described in the proposed rule.

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 Administrative Legal Services
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 June 14, 2010. Please send written comments to the above address by 5:00 p.m., August 3, 2010. 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: August 3, 2010
Time: 2:00 p.m.
Location: AHCCCS
701 E. Jefferson St.
Phoenix, AZ 85034
Nature: Public Hearing

Date: August 3, 2010
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: August 3, 2010
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 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

Section
R9-28-508. ~~Repeated~~ Self-Directed Attendant Care (SDAC)

ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

R9-28-508. ~~Repealed Self-Directed Attendant Care (SDAC)~~

A. For purposes of this Article the following terms are defined:

“Competent member” means a person who is oriented, exhibits evidence of logical thought, and can provide directions.

“Fiscal and Employer Agent” or “FEA” is a company specified by the program contractor or the Administration in contract to serve as an employment/payroll processing center for attendant care workers employed by the member to provide SDAC services.

“Medically stable” means the member’s skilled-care medical needs are routine and not subject to frequent change because of health issues.

“Personal Care” means activities of daily life such as dressing, bathing, eating and mobility.

B. In lieu of receiving other attendant care services a competent member who meets the requirements of A.R.S. § 36-2951 or the member’s legal guardian may choose to employ through the FEA a person to provide Self-Directed Attendant Care (SDAC) services. A paid caregiver described under R9-28-506 and a parent of a minor child shall not receive reimbursement for SDAC services.

C. The attendant care worker chosen to provide SDAC services does not need to be a registered provider. The attendant care worker shall have, at a minimum, training in First Aid, CPR, Universal Precautions, and state and federal laws regarding privacy and health information.

D. The Administration or Program Contractor shall cover SDAC services only if the member resides in the member’s home, and shall not cover SDAC services if the member is institutionalized or residing in an alternative residential setting. If the member has a legal guardian, the legal guardian shall be present when SDAC services are provided.

E. A member who chooses to receive SDAC services is not precluded from receiving medically necessary, cost-effective home health services from other agencies or providers if the services provided are not duplicative of the specific attendant care or skilled service already received through the program contractor.

F. A competent member or legal guardian may employ an SDAC attendant care worker to provide personal care, homemaker and general supervision services.

G. A competent member, who is medically stable, or the member’s legal guardian may employ an attendant care worker to also provide the following skilled services:

1. Bowel care, including suppositories, enemas, manual evacuation, and digital stimulation;

2. Bladder catheterizations (non-indwelling) that do not require a sterile procedure;

3. Wound care (non-sterile);

4. Glucose monitoring;

5. Glucagon as directed by the health care provider;

6. Insulin by subcutaneous injection only if the member is not able to self-inject and using a sliding scale dosing for insulin;

7. Permanent gastrostomy tube feeding; and

8. Additional services requested in writing with the approval of the Director and the Arizona State Board of Nursing.

H. The Administration or program contractor shall not cover services under this Section unless:

1. For each SDAC attendant care worker employed by a member or legal guardian, a registered nurse licensed under A.R.S. Title 32, Chapter 15 visits the member and SDAC attendant care worker before a skilled service is provided. The registered nurse will assess, educate, and train the member and SDAC attendant care worker regarding the specific skilled service that the member requires; and

2. The registered nurse determines in writing that the attendant care worker understands how and demonstrates the skill to perform the processes or procedures required to provide the specific skilled service.