

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 Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 2092.) The Governor's Office authorized the notice to proceed through the rulemaking process on March 22, 2012.

[R12-151]

PREAMBLE

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

R9-28-101	Amend
R9-28-509	New Section
R9-28-510	Amend
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. § 36-2932
Implementing statute: A.R.S. § 36-2932
- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**

Notice of Rulemaking Docket Opening: 18 A.A.R. 2084, August 24, 2012 (*in this issue*)
- 4. The agency's contact person who can answer questions about the rulemaking:**

Name:	Mariaelena Ugarte
Address:	AHCCCS Office of Administrative Legal Services 701 E. Jefferson St., Mail Drop 6200 Phoenix, AZ 85034
Telephone:	(602) 417- 4693
Fax:	(602) 253-9115
E-mail:	AHCCCSrules@azahcccs.gov
Web site:	www.azahcccs.gov
- 5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

The AHCCCS Administration is proposing rulemaking that provides elderly and disabled AHCCCS long-term care beneficiaries (AHCCCS beneficiary) flexibility and control with respect to the way in which attendant services and supports are provided in their homes or other community based settings. Attendant care services consist of nonprofessional assistance with activities of daily living and other services such as housekeeping. AHCCCS currently has a rule regarding this topic, Self-Directed Attendant Care (A.A.C. R9-28-508), which was adopted as a final rule in 2011. Since that time, Congress adopted section 1915(k) of the Social Security Act, the Community First Choice (CFC) state plan option. AHCCCS plans to elect the "Agency with Choice" CFC state plan option. Both, Agency with Choice and Self-Directed Attendant Care are member-directed service models. The models are not a service, but

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rather a manner in which services are delivered. By way of example of the differences, under Self-Directed Attendant Care, the AHCCCS beneficiary or the beneficiary's legal guardian serves as the legal employer of the paid caregiver. Under Agency with Choice, the agency serves as the legal employer of the paid caregiver while AHCCCS beneficiaries or their individual representatives assume some of the employer-based responsibilities.

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

A study was not relied upon for this rulemaking.

7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

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

The adoption of the Agency with Choice, member-directed service model is not expected to increase the number of services nor the quantity of service hours. The adoption of the member-directed service model, and subsequent approval of a state plan amendment from the Centers for Medicare and Medicaid Services, avails AHCCCS the opportunity to receive an increased six-percent Federal Medical Assistance Percentage for services and supports provided to AHCCCS beneficiaries that elect the Agency with Choice, member directed service model. Services and supports eligible for the increased FMAP must meet criteria required by the Centers for Medicare and Medicaid Services. Thus, the adoption of the model will result in state general fund savings of at least 3M per year.

Agencies that have offered a comparable service model option to AHCCCS beneficiaries have noted, as a result of the shared employer-based responsibilities, reductions in administrative costs. Similarly, they have noted an increase in employee retention and customer satisfaction.

AHCCCS beneficiaries will have access to more than one member-directed service model in lieu of receiving attendant care services and supports under a traditional service model. In the event the AHCCCS beneficiary does not want to act as the legal employer and assume all employer-based responsibilities of the employer of the paid caregiver, they can still assume, under the Agency with Choice service model, some of the employer-based responsibilities while receiving assistance from the agency that employs the paid caregiver.

9. The agency's contact person who can answer questions about 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
Web site: www.azahcccs.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

In addition to the public hearing available for comment or testimony in person, the proposed rule language will be available on the AHCCCS web site www.azahcccs.gov the week of August 6, 2012. Please send written or e-mail comments to the above address by the close of the comment period, 5:00 p.m., September 24, 2012.

Date: September 24, 2012
Time: 10:00 a.m.
Location: AHCCCS
701 E. Jefferson St.
Phoenix, AZ 85034
Nature: Public Hearing

Date: September 24, 2012
Time: 10:00 a.m.
Location: ALTCS: Arizona Long-term Care System
1010 N. Finance Center Drive, Suite 201
Tucson, AZ 85710
Nature: Public Hearing

Date: September 24, 2012
Time: 10:00 a.m.
Location: 2717 N. 4th St., Suite 130
Flagstaff, AZ 86004
Nature: Public Hearing

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

Not applicable

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

Not applicable

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

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

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

ARTICLE 1. DEFINITIONS

Section

R9-28-101. General Definitions

ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

Section

R9-28-509. ~~Reserved~~ Agency with Choice

R9-28-510. Case Management

ARTICLE 1. DEFINITIONS

R9-28-101. General Definitions

A. Location of definitions. Definitions applicable to Chapter 28 are found in the following:

Definition Section or Citation

“210” 42 CFR 435.211

“217” 42 CFR 435.217

“236” 42 CFR 435.236

“Acute” R9-28-301

“ADHS” A.A.C. R9-22-101

“ADL” R9-28-101

“Administration” A.R.S. § 36-2931

“Advance notice” R9-28-411

“Aged” R9-28-402

“Aggregate” A.A.C. R9-22-701

“Aggression” R9-28-301

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“AHCCCS” A.A.C. R9-22-101
“AHCCCS registered provider” A.A.C. R9-22-101
“ALTCS” R9-28-101
“ALTCS acute care services” R9-28-401
“Alternative HCBS setting” R9-28-101
“Ambulance” A.R.S. § 36-2201
“Ambulation” R9-28-301
“Applicant” A.A.C. R9-22-101
“Assessor” R9-28-301
~~“Associating time with an event and an action” R9-28-301~~
“Auto-assignment algorithm” or “Algorithm” A.A.C. R9-22-1701
“Bathing” R9-28-301
“Bathing or showering” R9-28-301
“Bed hold” R9-28-102
“Behavior intervention” R9-28-102
“Behavior management services” A.A.C. R9-22-1201
“Behavioral health evaluation” A.A.C. R9-22-1201
“Behavioral health medical practitioner” A.A.C. R9-22-1201
“Behavioral health professional” A.A.C. R9-20-101
“Behavioral health service” A.A.C. R9-20-101
“Behavioral health technician” A.A.C. R9-20-101
“Billed charges” A.A.C. R9-22-701
“Blind” 42 U.S.C. 1382c(a)(2)
“Capped fee-for-service” A.A.C. R9-22-101
~~“Caregiver training” R9-28-301~~
“Case management plan” R9-28-101
“Case management” R9-28-1101
“Case manager” R9-28-101
“Case record” A.A.C. R9-22-101
“Categorically-eligible” A.A.C. R9-22-101
“Certification” R9-28-501
“Certified psychiatric nurse practitioner” A.A.C. R9-22-1201
“CFR” R9-28-101
“Child” A.A.C. R9-22-1503
~~“Chronic” R9-28-301~~
“Clarity of communication” R9-28-301
“Clean claim” A.R.S. § 36-2904
~~“Climbing stairs or a ramp” R9-28-301~~
“Clinical supervision” A.A.C. R9-22-201
“CMS” A.A.C. R9-22-101
“Community mobility” R9-28-301
“Community spouse” R9-28-401
“Consecutive days” ~~R9-28-901~~ R9-28-801
“Continence” R9-28-301
“Contract” A.A.C. R9-22-101
“Contract year” A.A.C. R9-22-101

“Contractor” A.R.S. § 36-2901
“Cost avoid” A.A.C. R9-22-1201 or A.A.C. R9-22-1001
“County of fiscal responsibility” R9-28-701
“Covered services” R9-28-101
“CPT” A.A.C. R9-22-701
“Crawling and standing” R9-28-301
“CSR” R9-28-401
“Current” R9-28-301
“Day” A.A.C. R9-22-101 or A.A.C. R9-22-1101
“De novo hearing” 42 CFR 431.201
“Department” A.R.S. § 36-2901
“Developmental disability” or “DD” A.R.S. § 36-551
“Diagnostic services” A.A.C. R9-22-101
“Director” A.A.C. R9-22-101
“Disabled” R9-28-402
“Disenrollment” A.A.C. R9-22-1701
“Disruptive behavior” R9-28-301
“DME” A.A.C. R9-22-101
“Dressing” R9-28-301
“Eating” R9-28-301
“Eating or drinking” R9-28-301
~~“Elderly” R9-28-301~~
“Emergency medical services for the non-FES member” A.A.C. R9-22-201
“Emotional and cognitive functioning” R9-28-301
“Employed” R9-28-1320
“Encounter” A.A.C. R9-22-701
“Enrollment” A.A.C. R9-22-1701
“EPD” R9-28-301
“E.P.S.D.T. services” 42 CFR 440.40(b)
“Estate” A.R.S. § 14-1201
“Experimental services” ~~R9-22-101~~ A.A.C. R9-22-203
“Expressive verbal communication” R9-28-301
“Facility” A.A.C. R9-22-101
“Factor” 42 CFR 447.10
“Fair consideration” R9-28-401
“FBR” A.A.C. R9-22-101
“Federal financial participation” or “FFP” 42 CFR 400.203
“Fee-For-Service” or “FFS” A.A.C. R9-22-101
“File” ~~R9-28-901~~ R9-28-801
“First continuous period of institutionalization” R9-28-401
“Food preparation” R9-28-301
“Frequency” R9-28-301
“Functional assessment” R9-28-301
“Grievance” A.A.C. R9-34-202
“Grooming” R9-28-301
“GSA” A.A.C. R9-22-101

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“Guardian” A.R.S. § 14-5311
“Hand use” R9-28-301
“HCBS” or “Home and community based services” A.R.S. §§ 36-2931
“Health care practitioner” A.A.C. R9-22-1201
“History” R9-28-301
“Home” R9-28-101 and ~~R9-28-901~~ R9-28-801
“Home health services” A.A.C. R9-22-201
“Hospice” A.R.S. § 36-401
“Hospital” A.A.C. R9-22-101
“ICF-MR” or “Intermediate care facility for the mentally retarded” 42 U.S.C. 1396d(d)
“IADL” R9-28-101
“IHS” A.A.C. R9-22-101
“IMD” or “Institution for mental diseases” 42 CFR 435.1010
“Immediate risk of institutionalization” R9-28-301
“Individual Representative” R9-28-101
“Institutionalized” R9-28-401
“Institutionalized spouse” R9-28-101
“Interested Party” R9-28-106
“Intergovernmental agreement” or “IGA” R9-28-1101
“Intervention” R9-28-301
“JCAHO” R9-28-101
“License” or “licensure” A.A.C. R9-22-101
~~“Limited or occasional” R9-28-301~~
“Medical assessment” R9-28-301
“Medical or nursing services and treatments” or “services and treatments” R9-28-301
“Medical record” A.A.C. R9-22-101
“Medical services” A.R.S. § 36-401
~~“Medical supplies” R9-22-201~~
“Medically eligible” R9-28-401
“Medically necessary” A.A.C. R9-22-101
“Member” A.R.S. § 36-2931 and R9-28-901
“Mental disorder” A.R.S. § 36-501
“MMMNA” R9-28-401
“Mobility” R9-28-301
“Natural Support Services” R9-28-101
“Noncontracting provider” A.R.S. § 36-2931
“Nursing facility” or “NF” 42 U.S.C. 1396r(a)
“Occupational therapy” A.A.C. R9-22-201
“Orientation” R9-28-301
“Partial care” A.A.C. R9-22-1201
“PAS” R9-28-103
“Personal hygiene” R9-28-301
“Pharmaceutical service” A.A.C. R9-22-201
~~“Physical interruption” R9-28-301~~
~~“Physical participation” R9-28-301~~
“Physical therapy” A.A.C. R9-22-201

“Physically disabled” R9-28-301
~~“Physically lift” R9-28-301~~
“Physician” A.A.C. R9-22-101
“Physician consultant” R9-28-301
~~“Place” R9-28-901~~
“Post-stabilization care services” 42 CFR 438.114
“Practitioner” ~~R9-22-201~~ A.A.C. R9-22-101
“Primary care provider” or “(PCP)” A.A.C. R9-22-101
“Primary care provider services” A.A.C. R9-22-201
“Prior authorization” A.A.C. R9-22-101
“Prior period coverage” or “PPC” A.A.C. R9-22-101
“Program contractor” A.R.S. § 36-2931
“Provider” A.R.S. § 36-2931
“Psychiatrist” A.A.C. R9-22-1201
“Psychologist” A.A.C. R9-22-1201
“Psychosocial rehabilitation services” A.A.C. R9-22-201
“Qualified behavioral health service provider” R9-28-1101
“Quality management” A.A.C. R9-22-501
“Radiology” A.A.C. R9-22-101
“Reassessment” R9-28-103
“Recover” R9-28-901
“Redetermination” R9-28-401
“Referral” A.A.C. R9-22-101
“Regional behavioral health authority” or “RBHA” A.R.S. § 36-3401
“Reinsurance” A.A.C. R9-22-701
~~“Remembering an instruction and demonstration” R9-28-301~~
“Representative” R9-28-401
“Resistiveness” R9-28-301
~~“Resistiveness or rebelliousness” R9-28-301~~
“Respiratory therapy” A.A.C. R9-22-201
“Respite care” R9-28-102
“RFP” A.A.C. R9-22-101
“Room and board” R9-28-102
“Rolling and sitting” R9-28-301
“Running or wandering away” R9-28-301
“Scope of services” R9-28-102
“Section 1115 Waiver” A.R.S. § 36-2901
“Self-injurious behavior” R9-28-301
“Sensory” R9-28-301
“Seriously mentally ill” or “SMI” A.R.S. § 36-550
“Social worker” R9-28-301
“Special diet” R9-28-301
“Speech therapy” A.A.C. R9-22-201
“Spouse” R9-28-401
“SSA” 42 CFR 1000.10
“SSI” 42 CFR 435.4

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“Subcontract” A.A.C. R9-22-101
“TEFRA lien” ~~R9-28-901~~ R9-28-801
“Therapeutic leave” R9-28-501
“Toileting” R9-28-301
“Transferring” R9-28-301
“TRBHA” A.A.C. R9-22-1201
“Tribal contractor” R9-28-1101
“Tribal facility” A.R.S. § 36-2981
“Utilization ~~management~~ management/review” A.A.C. R9-22-501
“Ventilator dependent” R9-28-102
“Verbal or physical threatening” R9-28-301
“Vision” R9-28-301
“Wandering” R9-28-301
“Wheelchair mobility” R9-28-301

B. General definitions. In addition to definitions contained in A.R.S. §§ 36-551, 36-2901, 36-2931, and 9 A.A.C. 22, Article 1, the following words and phrases have the following meanings unless the context of the Chapter explicitly requires another meaning:

“ADL” or “Activities of Daily Living” mean activities a member must perform daily for the member’s regular day-to-day necessities, including but not limited to mobility, transferring, bathing, dressing, grooming, eating, and toileting.

“ALTCS” means the Arizona Long-term Care System as authorized by A.R.S. § 36-2932.

“Alternative HCBS setting” means a living arrangement approved by the Director and licensed or certified by a regulatory agency of the state, where a member may reside and receive HCBS, including:

For a person with a developmental disability specified in A.R.S. § 36-551:

Community residential setting defined in A.R.S. § 36-551;

Group home defined in A.R.S. § 36-551;

State-operated group home under A.R.S. § 36-591;

Group foster home under A.A.C. R6-5-5903;

Licensed residential facility for a person with traumatic brain injury under A.R.S. § 36-2939;

Behavioral health adult therapeutic home under 9 A.A.C. 20, Articles 1 and 15;

Level 2 and Level 3 behavioral health residential agencies under 9 A.A.C. 20, Articles 1, 4, 5, and 6; and

Rural substance abuse transitional centers under 9 A.A.C. 20, Articles 1 and 14; and

For a person who is EPD under R9-28-301, and the facility, setting, or institution is registered with AHCCCS:

Adult foster care defined in A.R.S. § 36-401 and as authorized in A.R.S. § 36-2939;

Assisted living home or assisted living center, units only, under A.R.S. § 36-401, and as authorized in A.R.S. § 36-2939;

Licensed residential facility for a person with a traumatic brain injury specified in A.R.S. § 36-2939;

Behavioral health adult therapeutic home under 9 A.A.C. 20, Articles 1 and 15;

Level 2 and Level 3 behavioral health residential agencies under 9 A.A.C. 20, Articles 1, 4, 5, and 6; and

Rural substance abuse transitional centers under 9 A.A.C. 20, Articles 1 and 14.

“Case management plan” means a service plan developed by a case manager that involves the overall management of a member’s care, and the continued monitoring and reassessment of the member’s need for services.

“Case manager” means a person who is either a degreed social worker, a licensed registered nurse, or has a minimum of two years of experience in providing case management services to a person who is EPD.

“CFR” means *Code of Federal Regulations*, unless otherwise specified in this Chapter.

“Covered services” means the health and medical services described in Articles 2 and 11 of this Chapter as being eligible for reimbursement by AHCCCS.

“Home” means a residential dwelling that is owned, rented, leased, or occupied by a member, at no cost to the mem-

ber, including a house, a mobile home, an apartment, or other similar shelter. A home is not a facility, a setting, or an institution, or a portion of any of these that is licensed or certified by a regulatory agency of the state as a:

- Health care institution under A.R.S. § 36-401;
- Residential care institution under A.R.S. § 36-401;
- Community residential setting under A.R.S. § 36-551; or
- Behavioral health facility under 9 A.A.C. 20, Articles 1, 4, 5, and 6.

“IADL” or “Instrumental Activities of Daily Living” mean activities related to independent living that a member must perform, including but not limited to:

- Preparing meals,
- Managing money,
- Shopping for groceries or personal items,
- Performing light or heavy housework, and
- Use of the telephone.

“IHS” means the Indian Health Service.

“Individual’s representative” means a parent, family member, guardian, advocate, or other person authorized by the individual to serve as a representative in connection with the provision of services and supports. This authorization should be in writing, when feasible, or by another method that clearly indicates the individual’s free choice. An individual’s representative may not also be a paid caregiver of an individual receiving services and supports.

“Institutionalized spouse” means the same as defined in 42 U.S.C. 1396r-5.

“JCAHO” means the Joint Commission on Accreditation of Healthcare Organizations

“Natural Support Services” are services provided voluntarily by a person not legally obligated to provide those services. The services are specified in the service plan as described under R9-28-510 and cannot supplant other covered services.

ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

R9-28-509. ~~Reserved~~ Agency with Choice

A. Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings specific to this Section:

“Agency” means a provider of home and community based services, other than an individual, that has a co-employment relationship with one or more members for purposes of this Section.

“Co-employment relationship” means a situation where the Agency serves as the legal employer of record and the ALTCS member or authorized representative assumes certain responsibilities related to directing and or managing care.

“Standardized training” means minimum training standards required of all paid caregivers by the Administration as specified in contract.

B. Purpose. The Agency with Choice program is an ALTCS member directed service model for the provision of home and community based services. Under this model, the ALTCS member or individual’s representative and the agency enter into a co-employment relationship.

C. In lieu of receiving HCBS services under a traditional service model a member or the member’s individual’s representative may choose to participate in the Agency with Choice service model. Under the Agency with Choice service model the agency shall maintain the authority to hire and fire paid caregivers and provide standardized training to the caregiver, and the member or authorized representative may elect to recruit, select, dismiss, determine duties, schedule, specify training to meet the unique needs of the member, and supervise the paid caregivers on a day-to-day basis.

D. Setting. This program is applicable to ALTCS members who reside in their own home.

E. A member who chooses to receive services under the Agency with Choice service model is not precluded from receiving medically necessary, cost-effective services and supports from other agencies or providers if the services provided are not duplicative of the specific attendant care or skilled service already received through the contractor.

R9-28-510. Case Management

A. A program contractor shall assign to each member a case manager to identify, plan, coordinate, monitor, and reassess the need for and provision of long-term care services.

B. A case manager shall:

1. Ensure that appropriate ALTCS placement and services are provided for a member within 30 days of enrollment;
2. Develop a service plan by:

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- a. Completing a case management plan when a member is enrolled in ALTCS and authorizing services for a member who continues to be financially and medically eligible for services;
 - b. Ensuring that a member participates in the preparation of the member's case management plan;
 - c. Specifying the paid and natural support services to be received by the member, including the duration, scope of services, units of service, frequency of service delivery, provider of services, and effective time period; and
 - d. Coordinating with the primary care provider in determining the necessary services for the member, including hospital and medical services;
3. Submit a written justification to the case manager's supervisor to include HCBS in the case management plan if the services exceed 80 percent of the institutional cost;
 4. Manage a case management plan by:
 - a. Re-evaluating and revising the case management plan when the member transfers to another facility, transfers to a hospital, has a change in level of care; and
 - b. Monitoring receipt of services by a member;
 5. Assist the member to maintain or progress toward the highest level of functioning;
 6. Ensure that records are transferred when the member is transferred from a facility or provider to a new facility or provider;
 7. Perform additional monitoring of a member with rehabilitation potential and whose condition is fragile or unstable, whose case management plan is marginally cost effective, or whose use of medical and hospital services is unusual;
 8. Arrange behavioral health services, if necessary. The case manager shall have initial and quarterly consultation and collaboration with a behavioral health professional to review the treatment plan, unless the case manager meets the definition of a behavioral health professional under A.A.C. R9-20-101.
- C. A program contractor shall submit a service plan and other information related to the case management plan upon request to the Administration