



NOTICES OF PROPOSED RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Proposed Rulemakings.

A proposed rulemaking is filed by an agency upon completion and submittal of a Notice of Rulemaking Docket Opening. Often these two documents are filed at the same time and published in the same *Register* issue.

When an agency files a Notice of Proposed Rulemaking under the Administrative Procedure Act (APA), the notice is published in the *Register* within three weeks of filing. See the publication schedule in the back of each issue of the *Register* for more information.

Under the APA, 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)

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed rules should be addressed to the agency that promulgated the rules. Refer to item #4 below to contact the person charged with the rulemaking and item #10 for the close of record and information related to public hearings and oral comments.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

[R16-80]

PREAMBLE

- | | |
|---------------------------------------------------------------------|---------------------------------|
| <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
| Article 4 | New Section |
| R9-22-401 | New Section |
| R9-22-402 | New Section |
| R9-22-403 | New Section |
| R9-22-404 | New Section |
| R9-22-405 | New Section |
| R9-22-406 | New Section |
| R9-22-407 | New Section |
| R9-22-408 | New Section |
- 2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
 Authorizing statutes: A.R.S. § 36-2905.04; A.R.S. § 36-2991
 Implementing statutes: A.R.S. § 36-2905.04; A.R.S. § 36-2991
- 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: 22 A.A.R. 1293, May 20, 2016 (*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, 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:**
 A.R.S. §§ 36-2905.04 and 36-2991 provide for the control and deterrence of fraud relating to AHCCCS eligibility, including the Hospital Presumptive Eligibility (HPE) program, through the discretionary imposition of a civil pen-



alty on those persons who obtain AHCCCS eligibility through fraudulent means. A.R.S. §§ 36-2905.04(E) and 36-2991(E) require the AHCCCS Director to adopt rules providing for the appeal of a decision to impose such a penalty. The Administration will promulgate rules necessary for the imposition and appeal of penalties resulting from eligibility fraud, including fraud associated with the HPE program.

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 referenced or relied upon when adding these regulations as A.R.S. §§ 36-2905.04(E) and 36-2991(E) require AHCCCS to promulgate these rules.

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 Administration anticipates a minimal economic impact on the implementing agency, small businesses and consumers. AHCCCS currently pursues civil remedies against those who obtain AHCCCS eligibility through fraudulent means; therefore, AHCCCS does not anticipate that adding these regulations to its recovery efforts will have more than a minimal economic impact.

In SFY 2015, the AHCCCS Member Compliance section, through prosecutions and repayment agreements, recovered \$812,124.14 in money from persons who obtained eligibility through fraudulent means. In addition, the unit saved \$840,008.24 by discontinuing the eligibility of persons who were deemed ineligible due to non-residency in Arizona, unreported income, impermissible transference of resources and other misrepresentations.

The Administration anticipates an increase of 10% to 25% above the existing recovery amounts within the next fiscal year as a result of this rulemaking, which represents a potentially positive economic impact for the implementing agency.

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, 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:

Proposed rule language will be available on the AHCCCS website www.azahcccs.gov the week of May 2, 2016. Please send written or email comments to the above address by the close of the comment period, 5:00 p.m., June 20, 2016.

Date: June 20, 2016

Time: 10:00 a.m.

Location: AHCCCS
701 E. Jefferson
Phoenix, AZ 85034

Nature: Public Hearing

Date: June 20, 2016

Time: 10:00 a.m.

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

Nature: Public Hearing

Date: June 20, 2016

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:

No other matters have been prescribed.

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:

The following federal law applies to the subject of this rulemaking:

42 C.F.R. Part 455 requires AHCCCS to maintain a fraud detection and investigation program to maintain the integrity of the Arizona Health Care Cost Containment System.

This rulemaking is not more stringent than, or prohibited by, federal law.

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

No analysis was submitted.

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 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

ARTICLE 4. REPEALED PENALTY FOR OBTAINING ELIGIBILITY BY FRAUD

Section

- R9-22-401. ~~Repealed~~ Definitions
- R9-22-402. ~~Repealed~~ Determining the Amount of the Penalty
- R9-22-403. ~~Repealed~~ Mitigating and Aggravating Circumstances
- R9-22-404. ~~Repealed~~ Notice of Intent
- R9-22-405. ~~Repealed~~ Failure to Respond to the Notice of Intent
- R9-22-406. ~~Repealed~~ Request for State Fair Hearing
- R9-22-407. Burden of Proof
- R9-22-408. Rescission of the Notice of Intent

ARTICLE 4. REPEALED PENALTY FOR OBTAINING ELIGIBILITY BY FRAUD

R9-22-401. Repealed Authority and Definitions

Definitions. The following definitions apply specifically to terms used within this Article:

“Amounts incurred by the system” include capitation payments, costs incurred by any contractor in excess of capitation, reinsurance, and other administrative, legal or investigative costs associated with a person who obtained eligibility contrary to A.R.S. §§ 36-2905.04 and/or A.R.S. § 36-2991.

“Application for eligibility” means any request for benefits administered by AHCCCS under the authority of A.R.S. Title 36, Chapter 29, including applications for presumptive eligibility submitted to hospitals as described under Article 16 of this Chapter.

“Penalty” means an amount not to exceed the amounts incurred by the system during any time period that the person would have been ineligible for benefits but for the false or fraudulent information provided on the application for eligibility. A penalty does not include, and does not need to be reduced by, the amount of any overpayments that AHCCCS may be entitled to recoup from a person who violated A.R.S. § 36-2905.04 and/or A.R.S. § 36-2991.

R9-22-402. Repealed Determining the Amount of the Penalty

A. AHCCCS shall determine the amount of a penalty according to A.R.S. § 36-2905.04(B) or A.R.S. § 36-2991(B), whichever is applicable, and this Article.

B. In addition to any penalty imposed pursuant to A.R.S. §§ 36-2905.04 or 36-2991, and this Article, the Administration may also recoup from the person the amounts incurred by the system as a part of the notice and appeal process described in this Article.



R9-22-403. ~~Repealed~~ Mitigating and Aggravating Circumstances

- A.** AHCCCS shall consider any of the following to be mitigating circumstances when determining the amount of a penalty for obtaining eligibility by fraud.
 - 1. Degree of culpability. The degree of culpability of a person is a mitigating circumstance if the person did not intend to provide or cause to be provided false or fraudulent information on the application for eligibility but was negligent as to the truthfulness of the information provided.
 - 2. Prior Offenses. At the time of the submittal of the application the person:
 - a. Did not have any prior criminal convictions; and
 - b. Had not been held civilly liable for defrauding a public assistance program.
 - 3. Financial condition. The financial condition of a person who violates A.R.S. §§ 36-2905.04 or 36-2991 is a mitigating circumstance if the imposition of a penalty without reduction will render the person incapable of obtaining necessities of life such as food, clothing, and shelter. AHCCCS may consider the resources available to the person when determining the amount of the penalty.
 - 4. Other matters as justice may require. AHCCCS shall take into account other circumstances of a mitigating nature, if in the interest of justice; the circumstances require a reduction of the penalty.
- B.** AHCCCS shall consider any of the following to be aggravating circumstances when determining the amount of a penalty for obtaining eligibility by fraud.
 - 1. Degree of culpability. The degree of culpability of a person who provides or causes to be provided false or fraudulent information on the application for eligibility is an aggravating circumstance if the person knows or had reason to know that the information provided on the application for eligibility was false or fraudulent, or the person failed to correct the false or fraudulent information prior to AHCCCS incurring a financial loss as a result of the application for eligibility.
 - 2. Prior offenses. At any time before the submittal of the application for eligibility, the person was held criminally or civilly liable for committing any fraud, waste, or abuse against any public assistance program.
 - 3. Financial Loss. The person’s violation of A.R.S. §§ 36-2905.04 or 36-2991 caused a loss to the system equal to or exceeding \$5,000.00.
 - 4. Other matters as justice may require. AHCCCS shall take into account other circumstances of an aggravating nature, if in the interest of justice; the circumstances require an increase of the penalty.

R9-22-404. ~~Repealed~~ Notice of Intent

- A.** If AHCCCS imposes a penalty pursuant to this Article, AHCCCS shall hand deliver or send by certified mail, return receipt requested, or Federal Express to the person, a written Notice of Intent to impose a penalty.
- B.** The Notice of Intent shall include:
 - 1. The legal and factual basis for AHCCCS’ determination that there has been a violation of A.R.S §§36-2905.04 and/or 36-2991;
 - 2. The penalty;
 - 3. The amounts incurred by the system as a result of the violation of A.R.S. §§ 36-2905.04 and/or 36-2991, if AHCCCS intends to recoup those amounts through this process; and
 - 4. The procedure for requesting a State Fair Hearing.

R9-22-405. ~~Repealed~~ Failure to Respond to the Notice of Intent

If a person fails to respond to the Notice of Intent within the timeframe described in A.A.C. § R9-22-406(A), AHCCCS shall uphold the penalty and recoupment amounts described in the Notice of Intent.

R9-22-406. ~~Repealed~~ Request for State Fair Hearing

- A.** To dispute the agency action described in the Notice of Intent, the person shall file a written Request for State Fair Hearing with AHCCCS within sixty (60) days from the date of receipt of the Notice of Intent.
- B.** If AHCCCS receives a timely request for a State Fair Hearing from the person, AHCCCS shall mail a Notice of Hearing pursuant to the Uniform Administrative Hearing Procedures described in A.R.S. Title 41, Chapter 6, Article 10.
- C.** AHCCCS shall accept a written request for withdrawal of a hearing request if the written request for withdrawal is received from the person before AHCCCS mails a Notice of Hearing under the Uniform Administrative Hearing Procedures described in A.R.S. Title 41, Chapter 6, Article 10.

R9-22-407. ~~Repealed~~ Burden of Proof

- A.** In any State Fair Hearing conducted under this Article, AHCCCS shall prove a violation of A.R.S. §§ 36-2905.04 and/or 36-2991, and any aggravating circumstances by a preponderance of the evidence.
- B.** AHCCCS does not have to prove any specific intent to defraud.
- C.** A person shall bear the burden of producing and proving by a preponderance of the evidence any affirmative defense or any circumstance that would justify reducing the amount of the penalty.

R9-22-408. ~~Repealed~~ Rescission of the Notice of Intent

AHCCCS may rescind the Notice of Intent at any time prior to the State Fair Hearing without prejudice.