

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION PERSONNEL ADMINISTRATION

PREAMBLE

1. **Sections Affected:** R2-5-403
Rulemaking Action: Amend
2. **The specific authority for rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. § 41-763
Implementing statutes: A.R.S. § 41-763(6)
3. **The effective date of the rules:**
August 5, 1997
4. **A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 3 A.A.R. 1272, May 9, 1997
Notice of Proposed Rulemaking: 3 A.A.R. 1298, May 16, 1997
5. **The name and address of agency personnel with whom persons may communicate regarding the rule:**
Name: Gordon Carrigan, Human Resources Generalist
Address: Department of Administration
1831 West Jefferson, Room 107
Phoenix, Arizona 85007
Telephone: (602) 542-4784
Fax number: (602) 542-2796
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**
The adopted rulemaking amends the subsection of the Annual Leave rule that explains eligibility for donated annual leave to conform to Laws 1997, Chapter 66, effective April 8, 1997. The Legislature removed the restriction that the seriously incapacitating illness or injury that qualifies an employee for donated annual leave must be non-job-related. A job-related illness or injury now can qualify for donated annual leave.
7. **A showing of good cause why the rule is necessary to promote statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state.**
Not applicable
8. **The summary of the economic, small business and consumer impact:**
The adopted rule will not affect small businesses and consumers. The impact is upon employees who have seriously incapacitating illnesses or injuries. Any financial impact would be restricted to a transfer of annual leave from 1 employee in an agency to another employee in the same agency on a dollar-for-dollar basis without increasing or decreasing salary expense.
9. **A description of the changes between the proposed rules, including supplemental notices, and final rules:**
No changes were made.
10. **A summary of the principle comments and the agency response to them:**
The Department did not receive any public comments.
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.

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

None.

13. Was this rule previously adopted as an emergency rule?

No.

14. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION
PERSONNEL ADMINISTRATION

ARTICLE 4. BENEFITS

Section

R2-5-403. Annual Leave

ARTICLE 4. BENEFITS

R2-5-403. Annual Leave

- A. No change
- B. No change
- C. No change
- D. No change
- E. Contribution of annual leave
 - 1. No change
 - 2. Eligibility. Annual leave may be contributed by 1 employee to another employee in the same agency provided all both of the following conditions are satisfied:
 - a. The recipient of the donated leave has a non-job-related, seriously incapacitating and extended illness or injury, or a member of the immediate family of the recipient of the donated leave has a seriously incapacitating and extended illness or injury; and
 - b. The recipient of leave for a qualifying illness or injury has exhausted all leave except for sick leave granted in accordance with R2-5-404(A)(4). If the employee is the recipient of donated annual leave for illness or injury of the recipient's immediate family,

the recipient 1st must exhaust 40 hours of sick leave, if available for this purpose pursuant to R2-5-404(A)(4) and, .

3.c. ~~All unused leave donated to the recipient is returned to the leave contributors on a pro rata basis, if Unused Leave. If the leave recipient separates from state service, or recovers prior to using all donated leave, donated or the need for the leave is otherwise abated, and unused leave shall be returned to leave contributors on a pro rata basis.~~

4.d. Donated Leave Computation. The dollar amount of annual donated leave donated is shall be adjusted proportionately in relation to the salary of the employee donating the leave and the salary of the employee receiving the donated leave.

3. ~~Proportionate adjustment of salaries methodology.~~ To determine the proportionate adjusted dollar value of the leave, divide the dollar amount of the annual leave donated, based upon the annual leave contributor's salary, by the annual leave recipient's hourly rate. The resulting calculation is the number of hours donated to the leave recipient.

- F. No change.
- G. No change.
- H. No change.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

PREAMBLE

1. Sections Affected:

R4-23-602
R4-23-603

Rulemaking Action:

New Section
Amend

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

Authorizing statutes: A.R.S. § 32-1904(A)(1), (2), (3), and (4)

Implementing statutes: A.R.S. §§ 32-1901(46), 32-1929, 32-1930, 32-1931, and 41-1072 et seq.

3. The effective date of the rules:

August 5, 1997

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 3 A.A.R. 234, January 17, 1997

Notice of Proposed Rulemaking: 3 A.A.R. 1169, May 2, 1997

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5. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Dean Wright, Compliance Officer
Address: Board of Pharmacy
5060 North 19th Avenue, Suite 101
Phoenix, Arizona 85015
Telephone: (602) 255-5125, ext. 131
Fax Number: (602) 255-5740

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

This rule was necessitated by a change in the Administrative Procedure Act (APA) in the 1995 legislative session. The legislature created A.R.S. § 41-1072 et seq. which requires the establishment of licensure time-frames.

The rule establishes a new R4-23-602 for permit time-frames to comply with A.R.S. § 41-1072 et seq. The rule changes R4-23-603 to reflect a statutory change made by the 1994 legislature. The legislature changed the defined term, "patent and proprietary drug", at A.R.S. § 32-1901(46) by deleting the words "patent and proprietary drug" and inserting the words "nonprescription drug" or "over-the-counter drug". The actual language of the definition is not changed. The rule substitutes the word "nonprescription" for the words "patent and proprietary" throughout the Section. The heading of R4-23-603 is changed from "Patent and Proprietary Medicine, Retail" to "Nonprescription Drugs, Retail". The rule replaces the word "medicine" with the word "drug". In subsection R4-23-603(A), the words, "(nonprescription requiring)" are deleted and the words "or nonprescription" are inserted. In subsection R4-23-603(A) the words "a nonprescription drug wholesale" are added. This is necessary because the legislature added a statutory definition at A.R.S. § 32-1901(47) for a "nonprescription drug wholesale permittee". In subsection R4-23-603(C), the words, "in the original container" are inserted to clarify the fact that a nonprescription drug permittee must sell only the original unopened manufacturer's package. In subsection R4-23-603(D), the words "nonprescription drug" replace the words "patent and proprietary". Because the Board's staff do most inspections, the words "or its designee" are added to subsection R4-23-603(D). The rule addresses grammar, format, and style changes necessary under the current APA and other necessary language changes to provide a clear, concise, and understandable document.

The Board believes that adoption of these rules will benefit the public by establishing clear time-frame standards for the permit application process and language consistency between statute and rule.

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

Not applicable

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

This economic, small business, and consumer impact statement for the permit time-frame rule analyzes the costs, savings, and benefits that accrue to the Board of Pharmacy, Secretary of State, permittees, and the public.

With the adoption of the proposed rule, the impact on established Board of Pharmacy procedures, Compliance Officer time, and other inspection-related costs is minimal. The benefits to the Board and its compliance staff are nonquantifiable. The estimated additional cost to the Secretary of State's Office is minimal. This additional cost stems from Secretary of State's staff time publishing the rules.

The benefits provided by the proposed rules are nonquantifiable. The rule should benefit the agency's relations with the regulated public by preventing misunderstandings about the time necessary for granting or denying a permit. The public will benefit from clear and concise standards for the permit application process.

The rule will have no financial impact unless the Board fails to meet the time-frame limits set by the rule. This failure would send the application fee back to the applicant, resulting in a small cost savings for the regulated public. The Board would also pay a penalty for failure into the general fund, resulting in a small increase in revenue for the state. The Board does not foresee noncompliance with the time-frames set in the rule. All parties benefit from a clear, concise, and understandable permit application process with definite time-frames. The use of definite time-frames prevents misunderstanding and promotes better communication between the Board and the regulated public.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules:

A typographical error was found in R4-23-602(C)(2). The 6th word of the sentence as printed in the Notice of Proposed Rulemaking is "complete". The correct word is "incomplete". The 6th word of R4-23-602(C)(2) as finally adopted is changed to "incomplete" so that the sentence makes sense.

After review of the adopted final rule by GRRC staff and upon their recommendation, we made nonsubstantive, grammar, punctuation, and format changes to increase the clarity, conciseness, and understandability of the rule. To clarify what happens if an applicant fails to submit a complete application packet, a new subsection (E) was added. To address a written comment concerning the substantive completeness review of nonprescription drug permits, a new subsection (F) was added. The new subsection (F) clearly shows the separation of the nonprescription drug permit from the substantive review process. Adding subsection (F) necessitated changes in renumbered subsection (H) to complete the clarification of the different time-frames established in the rule. This change was accomplished by adding subsections (H)(2)(a) and (b) and (H)(3)(a) and (b). All changes to the adopted final rule, as requested by GRRC staff, are nonsubstantive and clearly improve the rule.

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10. A summary of the principle comments and the agency response to them:

One written comment was received. The comment was in support of the proposed rulemaking with a question as to whether the 120-day length of the time-frame should apply to nonprescription drug permits. The staff response pointed out that, since the non-prescription drug permit is the simplest permit issued by the Board, the process in actual practice is simple and quite fast. The issuance of a nonprescription drug permit does not involve a substantive review. The permit is issued after the administrative completeness review. In response to the public comment, the Board changed subsection (H) and added subsection (F) and the result yielded a clearer and more understandable rule.

A public hearing on the proposed rulemaking was held on June 3, 1997. One individual attended the hearing. The individual spoke in support of the proposed rulemaking. There were no opposing comments received by the Board.

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 locations in the rules:
None.

13. Was this rule previously adopted as an emergency rule?
No.

14. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 23. BOARD OF PHARMACY

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

Section

- R4-23-602. Permit Application Process and Time-frames
R4-23-603. Nonprescription Drugs Patent and Proprietary Medicine, Retail

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

R4-23-602. Permit Application Process and Time-frames

A. A person applying for a permit shall submit to the Board Office an application packet consisting of:

1. A completed application form for the desired permit signed by the applicant;
2. A cashier's, certified business, or personal check, or money order for the applicable biennial permit fee; and
3. Other information or documents required by R4-23-603, R4-23-604, R4-23-605, R4-23-606, or R4-23-671.

B. The Board Office shall deem an application packet received on the date that the Board Office stamps on the packet as the packet is delivered to the Board Office.

C. The Board Office shall finish an administrative completeness review within 20 days from the date of receipt of an application packet.

1. The Board Office shall issue a written notice of administrative completeness to the applicant if no deficiencies are found in the application packet.
2. If the application packet is incomplete, the Board Office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 20-day time-frame for the Board Office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board Office with all missing information.
3. If the Board Office does not provide the applicant with notice regarding administrative completeness, the application packet shall be deemed complete 20 days after receipt by the Board Office.

D. An applicant with an incomplete application packet shall submit to the Board Office all of the missing information within 60 days of service of the notice of incompleteness.

1. If an applicant cannot submit all missing information within 60 days of service of the notice of incompleteness, the applicant may obtain an extension by submitting a written request to the Board Office postmarked or delivered within 60 days of service of the notice of incompleteness.

2. The written request for an extension shall document the reasons the applicant is unable to meet the 60-day deadline.

3. The Board Office shall review the request for an extension of the 60-day deadline and grant the request if the Board Office determines that an extension of the 60-day deadline will enable the applicant to assemble and submit the missing information. An extension of the 60-day deadline shall be for no more than 60 days. An applicant that requires an additional extension shall submit an additional written request in accordance with this subsection. The Board Office shall notify the applicant in writing of its decision to grant or deny the request for an extension.

E. If an applicant fails to submit a complete application packet within the time allowed, the Board Office shall close the applicant's file. An applicant whose file has been closed and who later wishes to obtain a permit shall apply again in accordance with subsection (A).

F. For a nonprescription drug permit applicant, the Board Office shall issue a permit on the day that the Board Office determines an administratively complete application packet is received.

G. Except as described in subsection (F), from the date on which the administrative completeness review of an application packet is finished, the Board Office shall complete a substantive review of the applicant's qualifications in no more than 120 days.

1. If an applicant is found to be ineligible, the Board Office shall issue a written notice of denial to the applicant;

2. If an applicant is found to be eligible, the Board Office shall recommend to the Board that the applicant be issued a permit. Upon receipt of the Board Office's recommendation, the Board shall either issue a permit to the applicant or if the Board determines the applicant does not meet eligibility requirements, return the matter to the Board Office.

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- 3. If the Board Office finds deficiencies during the substantive review of the application packet, the Board Office shall issue a written request to the applicant for additional documentation.
 - 4. The 120-day time-frame for a substantive review for the issuance or denial of a permit is suspended from the date of the written request for additional documentation until the date that all documentation is received.
 - 5. When the applicant and the Board Office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 35 days.
- H. For the purpose of A.R.S. § 41-1072 et seq., the Board establishes the following time-frames for permits.
- 1. Administrative completeness review time-frame: 20 days.
 - 2. Substantive review time-frame:
 - a. Nonprescription drug permit: none;
 - b. Except as described in subsection (H)(2)(a): 120 days.
 - 3. Overall time-frame:
 - a. Nonprescription drug permit: 20 days;
 - b. Except as described in subsection (H)(3)(a): 140 days.

R4-23-603. ~~Nonprescription Drugs Patent and Proprietary Medicine, Retail~~

A. Permit. General: ~~A No person or firm may not sell a nonprescription patent and proprietary drug except by obtaining a nonprescription drug patent and proprietary~~

~~medicine permit, a pharmacy permit, a manufacturer permit, a nonprescription drug wholesale permit, or wholesale drug permit, or by being a medical practitioner exempted by A.R.S. § 32-1921. Grocers and other non-pharmacy retail outlets that want to sell over-the-counter or nonprescription (non-prescription-requiring) drugs shall obtain a the nonprescription drug patent and proprietary permit.~~

- B. Application: ~~To obtain a permit to sell Before selling nonprescription patent and proprietary drugs, a person shall submit a completed make an application, on a form furnished by the Board, that includes which shall include, among other requirements, an the address for mailing and inspection and a telephone number. ; but the permit need not be for a fixed location. An applicant may obtain a permit for a mobile or non-fixed location, such as, a swap-meet vendor.~~
- C. Original package of manufacturer. ~~Nonprescription drug Patent and proprietary medicine permittees shall not repackage drugs but shall only sell drugs only in the original container packaged and labeled by the manufacturer.~~
- D. Inspection: ~~A nonprescription drug patent and proprietary permittee shall consent is subject to inspection by the Board or its designee during business hours.~~
- E. All drugs stocked, sold, or offered for sale shall be kept clean and protected from contamination and from excessive heat, cold, sunlight, and other deteriorating factors and shall comply with federal law. Any drug that exceeds which has exceeded its expiration date or does not comply with federal law shall be destroyed or returned to its source of supply.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ARIZONA LONG-TERM CARE SYSTEM

PREAMBLE

1. Sections Affected

- R9-28-601
- R9-28-602
- R9-28-603
- R9-28-604
- R9-28-605
- R9-28-606
- R9-28-607
- R9-28-801
- R9-28-801
- R9-28-802
- R9-28-802
- R9-28-803
- R9-28-803
- R9-28-804

Rulemaking Action

- Amend
- Repeal
- New Section
- Repeal
- New Section
- Repeal
- New Section
- Repeal

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 § 36-2932

Implementing statutes: A.R.S §§ 36-2904(H), 36-2932(E)(3) and (15), (J), (K), and (L)(1), 36-2940, 36-2942(8), 36-2943, and 36-2955.

3. The effective date of the rules:

August 11, 1997

Notices of Final Rulemaking

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 1 A.A.R. 2764, December 22, 1995

Notice of Proposed Rulemaking: 3 A.A.R. 1016, April 11, 1997

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

Name: Cheri Tomlinson

Address: AHCCCS
801 East Jefferson, MD 4200
Phoenix, Arizona 85034

Telephone: (602) 417-4198

Fax: (602-256-6756

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

Article 6

Seven rules (R9-28-601 to R9-28-607) in Article 6 set forth operational requirements for contract administration and oversight of ALTCS providers. The changes are designed to align ALTCS rules with AHCCCS acute care rules, move certain language (that is, appeals language in R9-28-605) to more appropriate Articles, and enhance the clarity and conciseness of existing language. The major changes:

- Require patient, medical, and cost records to be retained for 5 years from the date of final payment or, for records for which payment for services are in question, for 5 years after the date of final disposition or resolution. The change is designed to protect the integrity of services delivered to ALTCS members by ensuring that patient, medical, and cost records are complete and available. At the current time, records must be kept for 5 years or until pending audits are completed and approved by the AHCCCS Director, whichever comes 1st.
- Eliminate the \$5,000-per-violation sanction limit for noncompliance with ALTCS rules or ALTCS contracts. This rule is in alignment with the requirements in the contract language between AHCCCS and the Federal Government, in addition to language in the contract between AHCCCS and the ALTCS program contractors.
- Add language to automatically extend or modify contracts between AHCCCS and a program contractor 60 days from the date of mailing of formal contract extensions or modifications by AHCCCS, even if unsigned by a program contractor. This change is necessary to ensure that all ALTCS contracts are updated in a timely manner. The Administration is making the change to ensure that existing contractual requirements are clarified in rule. This change applies to all program contractors as noted in contract.
- Add language stating that if, within the 60 days, the program contractor notifies AHCCCS in writing that it refuses to sign the extension or modification, AHCCCS may initiate termination proceedings. This change applies only to the 2 program contractors that are private entities. Due to statutory requirements, this change does not apply to DES/DDD which provides services to the developmentally disabled population per A.R.S. § 36-2933(E), the 2 counties (Maricopa and Pima) which are required by A.R.S. § 36-2940(A) to be program contractors, and the 3 other counties (Cochise, Pinal, and Yavapai) which elected to provide ALTCS services per A.R.S. § 36-2940(F).

Article 8

Four rules (R9-28-801 through R9-28-804) within Article 8 which pertain to the grievance and appeal process used in the ALTCS program are being streamlined into 3 rules (R9-28-801 through R9-28-803). The changes are designed to:

- Align ALTCS rules with AHCCCS acute care rules;
- Enhance the clarity and conciseness of existing language through minor changes to wording and grammar; and
- Conform with actual agency practice.

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 summary of the economic, small business, and consumer impact:

Article 6

There are 4 changes that may have an impact upon ALTCS program contractors. These changes ensure that rule language conforms with actual agency practice. Because these changes already exist in contract, ALTCS program contractors are aware of the requirements and the possible economic impact of these changes to their organization.

It is anticipated that there may be a minimal economic impact on ALTCS program contractors for the cost of retaining patient, medical, and cost records for 5 years from the date of final payment or, for records for which payment for services are in question, for 5 years after the date of final disposition or resolution.

It is anticipated that there may be a minimal to significant economic impact because larger sanction amounts could be levied on program contractors that are commensurate with contract violations. In the past, AHCCCS has used sanctions in a limited fashion.

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Since February 1994, AHCCCS has levied approximately \$6,500 in sanctions to ALTCS program contractors and has sanctioned to the \$5,000-per-violation limit only once.

It is anticipated that there may be a minimal to significant economic impact on ALTCS program contractors who have their contract automatically extended or modified 60 days from the date of mailing of formal contract extensions or modifications even if unsigned by the program contractor.

It is anticipated that there may be a minimal to significant impact upon the 2 ALTCS program contractors that are private entities as a result of changes regarding contract termination proceedings. Due to statutory requirements, this change does not apply to DES/DDD, the 2 counties (Maricopa and Pima) which are required to be program contractors, and the 3 counties (Cochise, Pinal, and Yavapai) which elected to provide ALTCS services.

Entities and individuals benefiting from the alignment with acute care rules and user-friendly improvements to the rules include:

- AHCCCS; and
- ALTCS program contractors

The larger business community, the general public, and American Indian tribes will be unaffected by the changes.

Article 8

The changes could result in a nominal economic impact to AHCCCS because eligible persons or members whose benefits have been continued may be financially liable for all benefits received during a period of eligibility, if a discontinuance decision is upheld by the Director. Current rule states that appellants shall be financially liable. The impact of this change would be modest because, in actuality, appellants do not currently always assume financial liability in such instances.

Entities and individuals benefiting from the additional clarity and user-friendly improvements to the rules include:

- The Administration and DES/DDD, the program contractor for the developmentally disabled population;
- The 7 ALTCS program contractors for the elderly and/or physically disabled population;
- American Indian tribes that provide ALTCS services;
- ALTCS providers; and
- ALTCS members.

The larger business community and the general public will be unaffected by the changes.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

The changes between the proposed rules and final rules are minimal. This is primarily due to the fact that AHCCCS provided stakeholders with a "courtesy copy" of the rule packet prior to the public hearing held on May 23, 1997.

The differences between the proposed rule and final rule include:

- Grammatical, verb tense, and punctuation changes throughout;
- Revised the language in R9-28-604(D)(2) to be consistent with statute; and
- Revised language in R9-28-802(A) and (E)(2) to remove the words "adverse preadmission screening decision" to make the rules clearer and more concise and understandable.

10. A summary of the principal comments and the agency response to them:

AHCCCS received 1 comment on the proposed rule packet. This comment did not result in a revision to the rule language.

The comment received was regarding the striking of language to remove the maximum dollar amount of a monetary sanction that could be imposed on a program contractor for a violation of the contract. The Administration decided to leave the sanction language as proposed because of the following reasons:

1. To be consistent with the Acute plan rule language in A.A.C. R9-22-406;
2. To deter a contractor from not meeting a member's needs when a contractor knows there may be a significant financial sanction;
3. To permit the Administration to sanction a contractor an amount that is commensurate with the violation; and
4. To provide oversight and "an even playing field" for all contractors.

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:

- 42 CFR 447.50 through 447.58, December 19, 1990, incorporated in R9-28-602;
- 42 CFR 434, Subpart C, June 27, 1995, incorporated in R9-28-603;
- Section 1919(h) of the Social Security Act, December 19, 1989, incorporated in R9-28-607;
- 42 CFR 488, Subpart F, September 28, 1995, incorporated in R9-28-607.

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13. Was this rule previously adopted as an emergency rule?
Not applicable.

14. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

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

ARTICLE 6. PROGRAM CONTRACTS AND PROCUREMENT PROCESS

Section

- R9-28-601. General
- R9-28-602. Contracts
- R9-28-603. Subcontracts
- R9-28-604. ~~Request for Proposals (RFP); Contract Award~~
Request for proposals (RFP); contract award
- R9-28-605. ~~Contract or Proposal Protests; Appeals~~ Contract or proposal protests; appeals
- R9-28-606. ~~Contract Amendments; Mergers; Reorganizations~~
Contract amendments; mergers; reorganizations
- R9-28-607. Contract Sanctions

ARTICLE 8. GRIEVANCE AND APPEAL PROCESS

- R9-28-801. ~~General Provisions for All Grievance and Appeals~~
Eligibility Appeals and Hearing Requests for Applicants or Recipients of ALTCS Services
- R9-28-802. ~~Eligibility Appeals and Hearing Requests for Applicants or Recipients of ALTCS Services~~ Member Grievances
- R9-28-803. Grievances Nonmember Grievances
- R9-28-804. ~~Program Contractor, Provider, Noncontracting Provider, and County Grievances Repealed~~

ARTICLE 6. PROGRAM CONTRACTS AND PROCUREMENT PROCESS

R9-28-601. General

- A. ~~Contracts~~ The Administration shall establish contracts to provide services under the ALTCS ~~shall be established~~ between the Administration itself and qualified program contractors in conformance with the requirements set forth in this Article.
- B. ~~Contracts and subcontracts entered into in accordance with this Article shall become~~ are public records on file with the Administration. ~~All contracts and subcontracts shall include an agreement to comply with all applicable federal and state statutes and rules.~~
- C. Except as otherwise provided by law, this Article applies to the expenditure of all public monies, including federal assistance monies, by the Administration for ALTCS services.
- D. The Director may conduct investigations of persons who have ownership or management interests in an offeror ~~offerors~~ or an affiliated organization ~~organization~~ of the offeror.
- E. ~~Proposals shall be opened publicly, and the name of each offeror shall be read publicly and recorded.~~ All other information contained in the proposals ~~a proposal is~~ shall be confidential so as to avoid disclosure of contents prejudicial to competing offerors during the process of discussions. The proposals ~~Admin-~~ istration shall be open proposals for public inspection after contract award, unless upon an offeror's written request for nondisclosure, the Director makes a determination that disclosure is not in the best interests of the state.

- F. Failure of an offeror to supply information required by the request for proposals RFP is sufficient basis for the rejection of any ~~rejecting the offeror's~~ proposal.
- G. Disclosure by an offeror of the terms of its proposal to another offeror or to any other person ~~prior to individual before~~ contract award is prohibited and shall ~~may~~ be grounds for rejecting a ~~the disclosing offeror's~~ proposal.
- H. ~~All contract records shall be retained~~ The Administration shall retain all contract records for a period of five 5 years and ~~disposed~~ dispose of these in accordance with A.R.S. § 41-2550.

R9-28-602. Contracts

- A. Each contract between the Administration and a qualified program contractor shall be in writing and shall contain at least the information listed below:
 - 1. ~~Full disclosure of the~~ The method and amount of compensation or other consideration to be received by the program contractor. ;
 - 2. ~~Identification of the~~ The name and address of the program contractor. ;
 - 3. ~~Identification of the~~ The population to be covered by the contract. ;
 - 4. The amount, duration, and scope of services to be provided or for which compensation will be paid. ;
 - 5. ~~Specification of the~~ The term of the contract, including the beginning and ending dates, as well as methods of extension, renegotiation, and termination. ;
 - 6. A provision that the Director or the Secretary of the U.S. Department of Health and Human Services may evaluate, through inspection or other means, the quality, appropriateness, or timeliness of services performed under the contract. ;
 - 7. A description of ~~patient the member~~ services, medical and cost recordkeeping systems, and a provision that the Director or the Secretary of the U.S. Department of Health and Human Services may audit and inspect any of the program contractor's records that pertain to services performed and determinations of amounts payable under the contract. ~~Such These~~ records shall be maintained by the program contractor for five 5 years ~~from the date of final payment or for records relating to costs and expenses to which the Administration has taken exception.~~ 5 years after the date of final disposition or resolution of the exception; ~~or until any pending audits are completed and approved by the Director, whichever first occurs.~~
 - 8. A provision that ~~the program contractors shall~~ contractor maintain all forms, records, and statistical information required by the Director for purposes of audit and program management. ~~Such—material These~~ materials, including files, correspondence, and related information pertaining to services rendered or claims for payments, ~~shall be~~ are subject to inspection and copying by the Administration and the U.S. Department of Health and Human Services during normal business hours at the place of business of the ~~person individual~~ or organization

- maintaining the materials; records. The cost of duplicating materials shall be borne by the Administration.
9. A provision that records pertaining to eligible persons or members be retained in accordance with the record retention requirements of 45 CFR 74, Subpart D, incorporated by reference herein and on file with the Office of the Secretary of State.
 - 9.10. A provision that the program contractor safeguard confidential information as required by 42 CFR 431, Subpart E; about eligible persons and members as required by 42 CFR 431, Subpart F, incorporated by reference herein and on file with the Office of the Secretary of State.
 11. Identification of any activities to be performed by the program contractor affecting eligible persons and members that are related to third-party liability requirements as prescribed in 42 CFR 433, Subpart D, incorporated by reference herein and on file with the Office of the Secretary of State.
 - 10.12. Specification of those The functions that functions which may not be subcontracted; subcontracted, including a provision that any subcontract affecting categorically eligible individuals meets the requirements of 42 CFR 434.6(b), incorporated by reference herein and on file with the Office of the Secretary of State.
 - 11.13. A provision that the program contractor arrange for the collection from all probable sources of third 1st- and 3rd-party liability except for uninsured and underinsured motorist insurance, third 1st- and 3rd-party liability insurance, and tort-feasors. ;
 12. 14. A provision that the program contractor shall not bill or attempt to collect from the a member for any covered service except as may be authorized by statute or this Chapter. ;
 - 13.15. A provision that the contract shall not be assigned or transferred without the prior written approval of the Director. ;
 - 14.16. A provision that specifies The procedures for enrollment or re-enrollment of the covered population. members;
 - 15.17. A provision that specifies The procedures and criteria for terminating the contract. ;
 - 16.18. A provision that any cost-sharing requirements imposed for services furnished to members are in accordance with 42 CFR 447.50 through 447.58 as of December 19, 1990, which is are incorporated by reference herein and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments;
 - 17.19. A provision in the contract or proposal on which the contract is based that specifies ;
 - a. The The actuarial basis for computation of capitation fees, if applicable;
 - b. That the capitation fees and any other payments provided for in the contract do not exceed the payment limits set forth in 42 CFR 447.361, incorporated by reference herein and on file with the Office of the Secretary of State.
 - 18.20. Provisions regarding termination of enrollment and choice of health professional that are consistent with the requirements of 42 CFR 434.27 and 434.29, incorporated by reference herein and on file with the Office of the Secretary of State. A provision for terminating enrollment;
 19. A provision for choosing a health professional;
 - 20.21. A provision that a the program contractor shall provide for an internal grievance procedure that:
 - a. Is approved in writing by the Administration;
 - b. Provides for prompt resolution; and
 - c. Assures Ensures the participation of individuals with authority to require corrective action.
 - 21.22. A provision that requires the program contractor to maintain a comprehensive internal quality management assurance system consistent with ALTCS rules; rules and 42 CFR 434.34, incorporated by reference herein and on file with the Office of the Secretary of State.
 - 22.23. A provision that requires the program contractor to submit marketing plans, procedures, and materials to the Administration for approval before implementation. ;
 - 23.24. A statement in the contract or proposal on which the contract is based that all representations made by the program contractors contractor or its authorized representatives representative are truthful and complete to the best of their its knowledge. ;
 - 24.25. A provision that the program contractor shall be fully is responsible for all tax obligations, Worker's Workers' Compensation Insurance, and all other applicable insurance coverage, for itself and its employees, and that the Administration shall have has no responsibility or liability for any such of the taxes or insurance coverage. of the program contractor or its subcontractors;
 - 25.26. A provision that the program contractor agrees to comply with all applicable federal and state statutes and rules. ;
 - 26.27. A provision that the program contractor shall report each member's case management plan and any changes in a manner prescribed by the Director. ;
 - 27.28. A provision that members needing therapeutic leave or bed-hold days shall be returned to the same facility. ;
 - 28.29. A provision that requires the program contractors contractor to submit all RFPs for services to the Administration for review and written approval prior to before issuance. ;
 - 29.30. A provision that requires the program contractor to submit an annual comprehensive plan in response to the annual contract renewal amendment for delivery of services to the Administration as defined in A.R.S. § 36-2940, A.R.S. § 36-2940 to the Administration;
 - 30.31. An Agreement agreement to hold harmless and indemnify the state, the Director, the Administration, and members against claims, liabilities, judgments, costs, and expenses with respect to third 1st and 3rd parties, which may accrue against the state, the Director, the Administration, or members, through the negligence, omission, or intentional conduct of the program contractor. ;
 - 31.32. A provision that the program contractors shall contractor establish and implement a plan for preventing fraud or abuse by eligible persons, members, providers, and noncontracting providers. ;
 - 32.33. A provision that the program contractors agree to contractor comply with all third 1st- and 3rd-party liability and coordination of benefits requirements established by state and federal rules. ;
 - 33.34. A provision that the program contractors agree to contractor comply with financial and performance audit standards which that satisfy R9-28-512 and R9-28-513. ;
 - 34.35. A provision that the program contractors agree to contractor comply with inspection of care reviews. ;
 - 35.36. A provision that the program contractors contractor may forfeit payments if the program contractor fails to comply with the provisions of its contract or this Chapter. ;
 - 36.37. A provision that the program contractors shall contractor establish and submit to the Administration Direc-

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for approval a utilization control system plan which that satisfies A.R.S. § 36-2947 and R9-28-511. 9 A.A.C. 28, Article 5.

~~37.38.~~ A provision that the program ~~contractors shall~~ contractor develop and submit to the ~~Administration Director~~ for approval a plan for its case management system which that satisfies R9-28-510. ;

~~38.39.~~ A provision that the program ~~contractors shall~~ contractor notify the Administration if a member is no longer eligible due to death or a move out of the state. ;

~~39.40.~~ A provision that the program ~~contractors shall~~ contractor comply with the uniform accounting system established by the ~~Director. Administration;~~

~~40.41.~~ A provision that the program ~~contractors~~ contractor may forfeit funds to the Administration to recompense it for federal sanctions or penalties placed on the Administration for errors made by the program contractor. ;

~~41.42.~~ A provision that the program ~~contractors shall~~ contractor suspend or reduce services upon notification by the Administration pursuant to under A.R.S. § 36-2958. ;

~~42.43.~~ A provision that the program ~~contractors shall~~ contractor provide encounter reporting in the form and format prescribed by the ~~Director. Administration;~~ and

~~43.44.~~ A provision that if, at any time, federal monies are denied, not received, or become unavailable for any reason, the operation of ALTCS is suspended.

B. Each contract shall include all provisions necessary to ensure compliance with the applicable requirements of 42 CFR 434, Subpart C, and 45 CFR 74, Appendix G, incorporated by reference herein and on file with the Office of the Secretary of State.

R9-28-603. Subcontracts

A. Approval. ~~Any subcontract entered into by a program contractor to~~ When a program contractor enters into any subcontract or amends any subcontract to provide covered services to ALTCS members, or any amendment to a subcontract the subcontracts shall be subject to review and prior written approval by the Director. No A subcontract alters does not alter the legal responsibility of the a program contractor to the Administration to assure ensure that all activities under the contract are carried out.

B. Subcontracts. Each subcontract shall be in writing and include the requirements listed below:

1. A specification provision that the subcontract shall be governed by, and construed in accordance with all laws, rules, and contractual obligations of the program contractor;
2. An agreement ~~A provision~~ to notify the Administration in the event the agreement with the program contractor is amended or terminated;
3. An agreement ~~A provision~~ that assignment or delegation of the subcontract ~~shall be~~ is void unless prior written approval is obtained from the Administration;
4. An agreement ~~A provision~~ to hold harmless the state, the Director, the Administration, and members in the event the program contractor cannot or will not pay for covered services performed by the provider;
5. A provision that the subcontract and subcontract amendments are subject to review and approval by the ~~Director Administration as set forth~~ required in this Chapter and that a subcontract or subcontract amendment may be terminated, rescinded, or canceled by the ~~Director Administration~~ for a violation of the provisions of this Chapter;
6. An agreement ~~A provision~~ to hold harmless and indemnify the state, the Director, the Administration, and members against claims, liabilities, judgments, costs, and

expenses with respect to ~~third 1st and 3rd~~ parties, which may accrue against the state, the Director, the Administration, or members; through the negligence, omission, or intentional conduct of the provider;

7. The requirements contained in R9-28-602(A)(1) through (7), (9), (10), (14), (15), (17), and (23) through (25) subsection (A), paragraphs (1) through (7), (9) through (11), (15), (16), (18), and (26), be substituted with the term "provider" substituted wherever the term "program contractor" is used; and

8. ~~A provision that members are not held liable for payment to providers in the event of the program contractor's bankruptcy, in compliance with 42 CFR 434, Subpart C, June 27, 1995, 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.~~

R9-28-604. Request for proposals (RFP); contract award Request for Proposals (RFP); Contract Award

A. ~~A request for proposals~~ The Director may be canceled cancel or reject any and or all requests for proposals may be rejected in whole or in part if it is deemed by the Director to be in the best interests of the state. The reasons reason for cancellation or rejection shall be made part of the contract file.

B. RFP content. ~~This Section does not apply to contracting between the Administration and the counties or the Arizona Department of Economic Security pursuant to A.R.S. § 36-2940. The Administration items listed below shall be included include the following items in a request for proposals RFP:~~

1. The instructions and information to offerors concerning the proposal submission requirements, including:
 - a. The time and date set for the proposal opening submission deadline,
 - b. The address of the office at which proposals are to be received, and
 - c. The period during which the proposal shall remain open and any other special information;
2. The service description, covered populations, geographic coverage, specifications, and a delivery or performance schedule;
3. The contract terms and conditions, including bonding or other security requirements, if applicable;
4. ~~A provision for the award of contracts by categories of members or services in order to secure the most financially advantageous bids for the System;~~
5. ~~A provision that each qualified bid be entered with separate categories for the distinct groups of members or services to be covered by the proposed contracts, as set forth in the request for proposal;~~
- 4.6. A provision for a second 2nd-round competitive bid procedure to request voluntary price reduction reductions of bids from only those bidders which offerors that have been tentatively selected for award, if applicable before the final award or rejection of bids;
- 5.7. The factors to be used in the evaluation of proposals;
- 6.8. The location of and method for obtaining documents that are incorporated by reference;
- 7.9. ~~The requirement~~ A provision that the offeror acknowledge receipt of all RFP amendments issued by the Administration;
- 8.10. The type of services required and a description of the work involved;
- 9.11. The type of contract to be used and a copy of a proposed contract form or provisions;
10. 12. The estimated length of time during which service will be required;

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13. A requirement for cost or pricing data;
- 14.11. The minimum information that the proposal shall contain; and
- 15.12. A provision requiring that the offeror certify that the submission of the proposal does not involve collusion or other anticompetitive practice.
- C. Evaluation of proposals.
1. As provided in the RFP request for proposals, discussions ~~the Administration may be conducted~~ ~~conduct discussions~~ with responsible offerors who that submit proposals determined to be reasonably susceptible to being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the request for proposals. Offerors The Administration shall be accorded ~~accord offerors~~ fair treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted ~~permit revisions~~ after submissions ~~submission~~ and before award for the purpose of obtaining best and final offers. In conducting discussions, ~~there the Administration shall be no disclosure of not disclose~~ any information derived from proposals submitted by competing offerors.
 2. As part of its discussions, the Administration may conduct a ~~second~~ ~~2nd-round~~ ~~competition~~ ~~competitive~~ bid procedure to request voluntary price reduction of bids reductions from bidders which offerors that have been tentatively selected for award, before the final award or rejection of bids proposals.
 3. If discussions are conducted pursuant to paragraph (1) of this subsection (C)(1), ~~the Administration may issue a written request~~ for best and final offers. The request shall ~~set forth~~ include the date, time, and place for the submission of best and final offers. Best and final offers shall be requested only once, unless the Administration makes a determination that it is advantageous to the state to conduct further discussions or change the state's requirements. The request for best and final offers shall inform the offerors that if they do not submit a notice of withdrawal or a ~~best and final new~~ offer, their immediate previous ~~offers~~ offer shall be construed as their best and final offers offer.
 4. ~~Proposal~~ The Administration shall base proposal evaluation shall be based on the evaluation factors set forth in the request for proposals RFP.
 5. ~~Offerors~~ The Administration shall provide written notice to offerors whose proposals or offers are rejected shall be notified in writing of the rejection. The rejection notice shall be made part of the contract file and public record.
- D. Contract award.
1. ~~Taking into consideration~~ In competitive counties, the Administration shall use the evaluation factors set forth in the request for proposals RFP to assess each proposal, the contract and award a contract shall be made to the responsible and responsive offeror offerors with the lowest qualified offers which are determined to be most advantageous to the state. ~~Contracts may be awarded by categories of members of services in order to secure the most financially advantageous bids for the System. The Administration may award multiple contracts, to the extent possible for each county in the state for the purpose of limiting the number of high-risk persons which may be included in any contract.~~
 2. ~~Counties required by law to be program contractors, and counties that have exercised the right of 1st refusal, shall submit to the Administration a satisfactory comprehensive plan for delivery of services in response to the RFP.~~
- 3.2. The contract file shall contain the basis on which the award is made. A contract shall not be awarded to any program contractor which that will cause the System to lose any federal monies to which it is otherwise entitled.
- R9-28-605. ~~Contract or proposal protests; appeals~~ ~~Contract or Proposal Protests; Appeals~~**
- A. Resolution of proposal protests. The procurement officer issuing the request for proposals an RFP pursuant to under R9-28-604 shall have the authority to resolve proposal protests. Appeals Appeal from the decisions decision of the procurement officer may be made to the Director pursuant to this Section under subsection (G). This Section does not apply to contracting between the Administration and the counties or the Arizona Department of Economic Security pursuant to under A.R.S. § 36-2940.
- B. Filing of a protest:
1. Any interested party may protest a request for proposals RFP issued by the Administration, or the a proposed award, or the an award of a an ALTCS program contractor contract by filing a protest with the procurement officer. "Interested party" means an actual or prospective offeror whose economic interest may be affected substantially and directly by the issuance of a request for proposals, the award of a contract, or by the failure to award a contract. This Section shall does not apply to grievances related to contract performance. Such grievances Grievances related to contract performance are governed by R9-28-803 R9-28-804.
 2. Content of protest. The A protest shall be in writing and shall include the following information:
 - a. The name, address, and telephone number of the protester,
 - b. The signature of the protester or its representative,
 - c. ~~Identification of the~~ The request for proposals or contract number,
 - d. ~~A detailed statement of the~~ The legal and factual grounds of the protest, including copies of relevant documents, and
 - e. The relief requested.
- C. Time for filing protests:
1. Protests concerning improprieties in a request for proposals. Protests based upon alleged improprieties in the request for proposals that are apparent before the closing date submission deadline for receipt of initial proposals shall be filed before the closing date for receipt of initial proposals that submission deadline.
 2. In cases other than those covered in paragraph (1) of this subsection (C)(1), protests shall be filed within ten 10 days after the protester knows or should have known the basis of the protest, whichever is earlier.
- D. Stay of procurements during the protest. If a protest is filed before the award of a contract, the award may be made, unless the Director makes a written determination that there is a reasonable probability that the protest will be sustained and the stay of award of the contract is not contrary to the best interests of the state.
- E. Decision by the procurement officer:
1. The procurement officer shall issue a written decision within 14 days after a protest has been filed. The decision shall contain an explanation of the basis of the decision.
 2. The procurement officer shall furnish a copy of the decision to the protester, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.
 3. The time limit for decisions set forth in paragraph (1) of this subsection (E)(1) may be extended by the Director

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for a reasonable time not to exceed 30 days. The procurement officer shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.

4. If the procurement officer fails to issue a decision within the time limits set forth in subsections (E)(1) or (3) paragraph (1) or (3) of this subsection, the protester may proceed as if the procurement officer had issued a decision adverse to the protester.

F. Remedies:

1. If the procurement officer sustains the protest in whole or part and determines that the request for proposals, proposed contract award, or contract award does not comply with applicable statutes and rules, the officer shall implement an appropriate remedy.
2. In determining an appropriate remedy, the procurement officer shall consider all of the circumstances surrounding the procurement or proposed procurement including the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent of performance, costs to the state, the urgency of the procurement, and the impact of the relief on the Administration's mission.
3. A remedy will shall be deemed appropriate if it includes one or more of the following:
 - a. Decline to exercise an option to renew under the contract;
 - b. Terminate the contract;
 - c. Reissue the request for proposals;
 - d. Issue a new request for proposals; or
 - e. Award a contract consistent with procurement statutes and rules.

G. Appeals to the Director:

1. An appeal from a decision entered or deemed to be entered by the procurement officer shall be filed with the Director within five 5 days from the date the decision is received. The appellant shall also file a copy of the appeal with the procurement officer.
2. Content of appeal. The appeal shall contain:
 - a. The information set forth in subsection (B);
 - b. A copy of the decision of the procurement officer;
 - c. The precise factual or legal error in the decision of the procurement officer from which the appeal is taken; and
 - d. A request for hearing unless the appellant desires that the Director's decision be based solely upon the contract record as it then exists.

- H. Stay of procurement during appeal.** If an appeal a protest is filed before an award of contract and the award of the contract was stayed by the procurement officer pursuant to under subsection (D) of this Section, the filing of an appeal shall automatically continue the stay, unless the Director makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the state.

- I. Dismissal before hearing.** The Director shall dismiss, upon a written determination, an appeal before scheduling a hearing if:

1. The appeal does not state a valid basis for protest;
2. The appeal is untimely pursuant to under subsection (G) of this Section; or
3. The appeal is moot.

- J. Hearing.** Hearings on appeals of proposal protest decisions shall be conducted as contested cases pursuant to this Chapter and the Arizona Administrative Procedure Act (Arizona Revised Statutes, Title 41, Chapter 6, Article 1). Hearings

requested under this rule shall be conducted as described in Article 8.

- K. Remedies.** If the Director sustains the appeal in whole or part and determines that a request for proposals, proposed award, or award does not comply with procurement statutes and rules, remedies shall be implemented pursuant to subsection (F) of this Section.

L. Hearing procedures:

1. If a hearing is required or permitted under this Section, the Director shall appoint a hearing officer.
2. If a hearing is required or permitted, the hearing officer shall arrange for a prompt hearing and notify the parties in writing of the time and place of the hearing.
3. The hearing shall be conducted in an informal manner without formal rules of evidence or procedure.
4. The hearing officer may:
 - a. Hold prehearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
 - b. Require parties to state their positions concerning the various issues in the proceeding;
 - c. Require parties to produce for examination those relevant witnesses and documents under their control;
 - d. Rule on motions and other procedural items on matters pending before such officer;
 - e. Regulate the course of the hearing and conduct of participants;
 - f. Establish time limits for submission of motions or memoranda;
 - g. Impose appropriate sanctions against any person failing to obey an order under these procedures, which may include:
 - i. Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;
 - ii. Excluding all testimony of an unresponsive or evasive witness; and
 - iii. Expelling the person from further participation in the hearing;
 - h. Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice;
 - i. Administer oaths or affirmations.
5. A transcribed record of the hearing shall be made available at cost to the requesting party.

M. Recommendation by the hearing officer:

1. The hearing officer shall make a recommendation to the Director based on the evidence presented. The recommendation shall include findings of fact and conclusions of law.
2. The Director may affirm, modify, or reject the hearing officer's recommendation in whole or in part, may remand the matter to the hearing officer with instructions, or make any other appropriate disposition.

- N. Decision by the Director.** The decision by the Director shall be sent to all parties by personal service or certified mail, return receipt requested. The decision shall state that any party adversely affected may, within 10 days of receipt, request a rehearing.

O. Rehearing of Director's decision:

1. Any party, including a procurement officer, who is aggrieved by the Director's decision may file a written request for rehearing of the decision specifying the particular grounds:

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- a. The request for rehearing shall be filed with the Director within ten days after receipt of the decision.
- b. The request shall be clearly designated as a "request for rehearing".
2. The Director or hearing officer may require the filing of written briefs and may provide for oral argument.
3. A rehearing of the decision may be granted for any of the following causes:
 - a. Irregularity in the proceedings or an abuse of discretion by the Director depriving the requesting party of a fair hearing;
 - b. Misconduct of the Director, his staff or the hearing officer or any party;
 - c. Accident or surprise that could not have been prevented by ordinary prudence;
 - d. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
 - e. Excessive or insufficient penalties;
 - f. Error in the admission or rejection of evidence or other error of law occurring at the hearing;
 - g. A showing that the decision is not justified by the evidence or is contrary to law.
4. The Director's decision concerning a request for rehearing shall be in writing and shall state the basis of the decision. A decision granting a rehearing shall specify with particularity the grounds on which the rehearing is granted, and the date, time and place of the rehearing. The rehearing shall cover only those matters specified in the decision.
5. The Director, within the time for filing a request for rehearing under this subsection, may on his own initiative order a rehearing of his decision for any reason for which he might have granted a rehearing on request of a party.
6. The final decision of the Director after consideration of a petition for rehearing or review shall be subject to review as provided by A.R.S. § 12-901 et seq.

P. Failure to exhaust administrative remedies. Failure to submit a protest and appeal in a timely manner shall constitute a failure to exhaust administrative remedies required as a condition to seeking judicial review.

R9-28-606. Contract amendments; mergers; reorganizations
Contract Amendments; Mergers; Reorganizations

- A.** Any merger, reorganization or change in ownership of a program contractor shall constitute a contract amendment which requires the written prior approval of the Director. If there is a proposed merger, reorganization, or change in ownership of a program contractor, the program contractor shall submit details of the proposed merger, reorganization, or change in ownership to the Administration for prior written approval by the Director. Additionally, if there is a proposed any merger, reorganization, or change in ownership of a subcontractor provider (A.R.S. §§ 36-2931 and 36-2901) that is related to or affiliated with the program contractor shall constitute a contract amendment which requires the written prior approval of the Director. The program contractor shall submit the details of the proposed merger, reorganization, or change in ownership to the Administration for prior written approval of by the Director. To be effective, contract amendments shall be reduced to writing and executed by the program contractor and the Director.
- B.** In those counties where the county is not required by law to be the program contractor, the Administration shall deem amendments to extend or modify the contract to have been accepted 60 days from the date of mailing by the Administration, even if the amendment has not been signed by the program contractor. If, within the 60 days, the program contractor notifies the

Administration in writing that it refuses to sign the amendment, the Administration may initiate contract termination proceedings.

- C.** For counties and state agencies required by law to be a program contractor, the Administration shall deem amendments to extend or modify the contract to have been accepted 60 days from the date of mailing by the Administration, even if the amendment has not been signed by the mandated program contractor. If, within the 60 days, the program contractor notifies the Administration in writing that it refuses to sign the amendment, the disagreement will be considered a grievance and administered in accordance with Article 8.

R9-28-607. Contract Sanctions

- A.** General. Grounds for suspension, denial, refusal, suspending, denying, refusing, or failure failing to renew, or terminating of a contract or subcontract, or imposing of monetary sanctions shall include, but not be limited to, the reasons listed below:
 1. Submitting any misleading, false, or fraudulent information when submitting claims with a claim for payment;
 2. Submitting false information for the purpose of obtaining greater compensation than that to which the program contractor or provider is legally entitled;
 3. Submitting inaccurate or incomplete representations in the bidding process a proposal;
 4. Failing to disclose or make available to the Administration, or its authorized representatives, records of services provided to eligible persons or members and records of payment made thereafter;
 5. Submitting false information for the purpose of obtaining authorization for the provision of to provide services requiring such authorization;
 6. Over-provision of services or the delivery of Over-providing services or delivering unnecessary services by inducing or otherwise causing an eligible person or member to receive services or items not required by such the eligible person or member or by directly furnishing such the services or items;
 7. Provision of Providing any services service in violation of, or not authorized by, or which is otherwise precluded by licensure, certification or other law;
 8. Breach of the Breaching terms or conditions of a contract;
 9. A felony conviction of any member Having a member of the board, administrator, managers manager, or participating physician of a program contractor, convicted of a felony;
 10. Giving or accepting a rebate, kickback, or fee, or portion of a fee, or charge for referral of an eligible person or member referral;
 11. Violation of Violating any of the provisions of A.R.S. Title 36, Chapter 29; Title XIX of the Social Security Act, as amended; or any state or federal rule promulgated thereunder;
 12. Demonstration of Demonstrating an inability to perform contract obligations under a program contractor agreement by prior conduct, including substance abuse.
 13. Determination of a substantial breach of Having substantially breached a previous or existing contract agreement with other another state agencies agency;
 14. Determination that a program contractor has Being previously been found ineligible to participate in a federal or state assembled medical program by the Administration or any other state or federal governmental agency;
 15. Failing to reimburse subcontracting and noncontracting providers for medically necessary institutional and HCBS home and community-based services within 30 days of the receipt of valid, clean claims, unless a different period

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is specified by contract, or failing to ensure that future claims will be timely paid;

16. Failing to reimburse subcontracting and noncontracting providers utilized by referral for the provision of for medically necessary acute health care services to their members within 60 days of receipt of valid, clean claims, unless a different period is specified by contract, or failing to ensure that future claims will be timely paid;
 17. Failing to reimburse noncontracting providers for the provision of emergency medical services provided to the program contractor's members within 60 days of receipt of valid, clean claims, or failing to ensure that future claims will be timely paid;
 18. Failure Failing to provide and maintain quality health care service to eligible persons and members, as determined by standards established by state and federal statutes or rules;
 19. Substantiation that the program contractor, either by omission or commission, is endangering or has endangered the health, safety or well-being of an eligible person or member. Endangering the health, safety, or well-being of an eligible person or member, either by omission or commission.
 20. Upon the program contractor becoming Becoming insolvent, or filing proceedings in bankruptcy or reorganization under the United States Code, or assigning rights or obligations under the contract without the prior written consent of the Administration;
 21. Failing or refusing Failure or refusal of the program contractor to comply with the reporting or disclosure requirements; of 42 CFR 455, Subpart B, incorporated by reference herein and on file with the Office of the Secretary of State.
 22. Substantiation of Committing fraud or abuse by a program contractor or having a provider that commits fraud or abuse; subcontractor in accordance with 42 CFR 455(2) and 42 CFR 1002.203, incorporated by reference herein and on file with the Office of the Secretary of State.
 23. Conviction of a criminal offense related to involvement in any program under Medicare, Medicaid, or Title XX of the Social Security Act of Having any person who has an ownership or control controlling interest in the program contractor or subcontractor provider, or is an agent or managing employee of the program contractor or subcontractor, provider convicted of a criminal offense related to involvement in any program under Medicare, Medicaid, or Title XX of the Social Security Act;
 24. Failure Failing to conform to and abide by the applicable laws or rules of the state of Arizona, the United States Federal Government, and the Administration;
 25. Failure Failing to comply with the approved utilization review plan;
 26. Suspension or revocation of a physician provider's Having a suspended or revoked professional license; by the Arizona Board of Medical Examiners.
- B.** Monetary sanctions. The imposition of monetary Monetary sanctions is are imposed as follows:
1. Except as provided in subsection (C) (B)(2), withholding the Administration shall withhold a percentage of the a program contractor's capitation prepayment payment, commensurate with the nature, term, and severity of the violation but not to exceed \$5,000.00 per violation;
 2. If a program contractor provides inappropriate services to an eligible person or member, the Administration shall

withhold an amount equal to the cost of the services from the program contractor's capitation payment;

- 2.3. Written The Administration shall provide a written notice shall be provided to a program contractors contractor specifying the monetary sanction, grounds for such the sanction, and either the length of suspension of payment or the amount of prepayment payment to be withheld; and
 - 3.4. Nothing contained in this Section shall be construed to prevent the Administration from imposing sanctions provided for by contract.
- C.** The Administration shall withhold or forfeit capitation payments to the program contractor if the program contractor provides inappropriate services to an eligible person in an amount which equals the cost of the inappropriate services.
- D.C.** Modification and termination Termination or suspension of the a contract without cause. Termination or suspension of the a contract, in whole or in part, without cause shall be effective 30 days after mailing the Administration mails written notice of termination or suspension by certified mail, return receipt requested, to the a program contractor.
- E.D.** The Administration shall apply remedies for nursing facilities that do not meet requirements of participation in accordance with Section 1919(h) of the Social Security Act, effective December 19, 1989, and 42 CFR 488, Subpart F, September 28, 1995, and the State Plan under Title XIX of the Social Security Act, Medical Assistance Program, page 79c, April 1, 1992, Attachment 4.35-A, January 1, 1991, and Attachment 4.35-B, April 1, 1992, incorporated by reference herein and on file with the Administration and the Office of the Secretary of State. These incorporations by reference contain no future editions or amendments.
- E.E.** Notification. The Director shall provide written notice of intent to suspend, deny, fail refuse to renew, or terminate a contract or subcontract. Such The notice shall be provided to affected principals, enrolled members, and other interested parties and shall include the effective date of, and reason for, such the action.
- G.** Preadmission screening contractors. The Director may suspend, deny, refuse or fail to renew or terminate a contract if the preadmission screening contractor fails to meet the provisions of its contract.

ARTICLE 8. GRIEVANCE AND APPEAL PROCESS

R9-28-801. Eligibility Appeals and Hearing Requests for Applicant or Recipients of ALTCS Services.

- A.** Individuals affected by adverse eligibility actions may appeal and request a hearing concerning any of the following adverse eligibility actions:
1. Denial of eligibility;
 2. Discontinuance of eligibility;
 3. Delay in the eligibility determination;
 4. Adverse preadmission screening decision;
 5. Adverse post eligibility treatment of income; or
 6. Adverse disability determination.
- B.** Notice of an adverse eligibility action shall be personally delivered or mailed to the affected individual by regular mail. For purposes of this Section, the date of the notice of action shall be the date of personal delivery to the individual or the date of mailing.
- C.** Computation of time. In computing any period of time for establishing timeliness of filing grievances and appeals allowed by this Article, the day of the act, event or decision from which the designation of time begins to run shall not be included. Intermediate Saturdays, Sundays and legal holidays shall be included in the computation. The last day of the period so computed shall be included unless it is a Saturday, a Sunday

or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday.

D. Eligibility appeals and hearing request process:

1. The applicant, eligible person, or an authorized representative may appeal and request a hearing from any adverse eligibility action by completing and submitting the AHCCCS Request for Hearing form or by submitting a written request as described in paragraph (4) of this subsection not later than 20 days after the date of the Notice of Action for denials and not later than ten days after the effective date of the action for all other adverse actions.
2. The request for hearing form or the written request shall be submitted to either the eligibility office which rendered the adverse eligibility action or directly to the AHCCCS Administration, Office of Grievance and Appeals. If the Request for Hearing is submitted by mail, the date of request shall be the postmarked date. If the Request for Hearing is submitted in person, the date of request shall be the date on which the request is submitted to the eligibility office or the AHCCCS Administration, Office of Grievance and Appeals.
3. Eligibility offices shall maintain a register which documents the dates on which Requests for Hearings are submitted. Each Request for Hearing form shall indicate the date of request as described in paragraph (2).
4. If the appellant or authorized representative does not utilize the request for hearing form, he shall provide the following information on a written hearing request:
 - a. The case name;
 - b. Adverse eligibility decision being appealed; and
 - c. Reason for appeal.
5. If requested, the eligibility office shall assist the appellant or authorized representative in the completion of the Request for Hearing form.
6. The eligibility office shall send to the AHCCCS Administration, Office of Grievance and Appeals: Appeals, the Pre-Hearing Summary, a copy of the case file, documents pertinent to the adverse action, and the Request for Hearing form or written request which must be received by the AHCCCS Administration, Office of Grievance and Appeals, not later than ten days after the date of the receipt of the request. In the event that the appeal request is submitted directly to the AHCCCS Administration, Office of Grievance and Appeals, the eligibility office shall send the Pre-Hearing Summary, a copy of the case file, and documents pertinent to the adverse action, which shall be received by the AHCCCS Administration, Office of Grievance and Appeals, not later than ten days from the date of a request for such materials by the Administration.
7. The prehearing summary shall be completed by the eligibility office and shall summarize the facts and factual basis for the adverse eligibility action.

E. Withdrawal and denial of the hearing request:

1. The AHCCCS Hearing Officer or designee shall deny a Request for Hearing and deny the appeal if a written request for withdrawal is received from the appellant prior to the scheduled date of the hearing. The grievance file then shall be closed.
2. The AHCCCS Hearing Officer or designee may deny an appeal and Request for Hearing if:
 - a. The date of request is subsequent to the timeframes specified in subsection (C);
 - b. The appeal and request for hearing is for a reason other than those identified in subsection (A); or,

c. The appellant's appeal rights have been waived.

F. Postponement:

1. The Chief Hearing Officer or designee on motion may postpone a hearing. When the request for postponement is made, it shall be made in writing and received by the AHCCCS Administration, Office of Grievance and Appeals, no later than five days, excluding Saturdays, Sundays and legal holidays, prior to the scheduled hearing date. The AHCCCS Chief Hearing Officer or designee shall grant a request for postponement on a showing that:
 - a. There is substantial cause for the postponement, and
 - b. The cause is beyond the reasonable control of the party.
2. If a postponement is granted, the hearing shall be rescheduled at the earliest practicable date.

G. Notice of Hearing. The notice of hearing shall be in accordance with A.R.S. § 41-1061 and shall include the following information:

1. A statement asserting the appellant's financial liability if ALTCS benefits are continued and a proposed discontinuance is upheld by the Director; and,
2. A statement detailing how an appellant may request a change in the scheduled hearing date.

H. Failure to appear for hearing. Should the appellant or the appellant's representative fail to appear at the hearing without good cause or a postponement, the AHCCCS Chief Hearing Officer or designee may:

1. Proceed with the hearing;
2. Reschedule the hearing with further notice on his own motion;
3. Issue a decision based on the evidence of record; or
4. Issue a default disposition.

I. ALTCS coverage during the appeal process:

1. Individuals appealing a discontinuance: A discontinuance is a termination of ALTCS benefits. For actions requiring a ten days' advance notice, individuals requesting a hearing before the effective date of the adverse action shall receive continued ALTCS benefits until an adverse decision on appeal is rendered. Appellants whose benefits are continued shall be financially liable for all ALTCS benefits received during a period of ineligibility if the discontinuance decision is upheld by the AHCCCS Director.
2. Individuals appealing a denial of ALTCS coverage:
 - a. A denial is an adverse eligibility decision or adverse preadmission screening decision which finds the applicant ineligible for ALTCS benefits.
 - b. Individuals may appeal this denial within the time frames specified in subsection D. In the event that the denial is overturned, the effective date of ALTCS coverage shall be established by the Director in accordance with applicable law.

J. Appellant's hearing rights:

1. Each appellant shall be afforded those hearing rights specified in A.R.S. §§ 41-1061 and 41-1062.
2. Each appellant has the right to obtain copies of any relevant documents from the case record at the appellant's expense.
3. Each appellant has the right to appear at the hearing and be heard in person, by telephone if available, through a representative designated in writing by the appellant, or to submit to the Administration a written statement that is signed and notarized prior to the hearing.
4. Each appellant has the right to bring an interpreter to assist at the hearing.

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5. Persons who do not speak English or are deaf or mute according to A.R.S. § 12-242 shall be provided an interpreter by the Administration if the Administration is notified at least ten days in advance of the hearing.
- K. Conduct of hearing.** The hearing shall be conducted pursuant to A.R.S. §§ 41-1061 and 41-1062.
- L. AHCCCS Hearing Officer's decision:**
1. Except as provided in paragraph (2) of this subsection, after the conclusion of the hearing, the AHCCCS hearing officer shall prepare written findings of fact and conclusions of law and render a recommended decision to the Director.
 2. Under the following circumstances the AHCCCS Chief Hearing Officer or designee shall issue a final disposition in a case without a hearing by:
 - a. Default order, when the appellant or the appellant's representative fails to appear at the hearing without good cause. Upon application by appellant of good cause shown, the case may be reopened; or
 - b. Disposition order when the appellant withdraws his appeal or there is a stipulated agreement to the disposition; or
 - c. Dismissal order when the appeal was not timely filed.
- M. Decision of the Director.**
1. After receipt of the hearing officer's recommended decision, the Director shall issue his decision in writing, which shall include findings of fact and conclusions of law, and unless otherwise provided by law, personally deliver or mail by certified mail a copy thereof to all parties at their last known residence or place of business. If a discontinuance or denial is upheld, the decision shall also state that the appellant may reapply for ALTCS benefits. The decision shall notify any party adversely affected of the right to request rehearing or review.
 2. As part of his decision, the Director may remand the case for eligibility decision.
 3. Except as provided in subsection (N), the Director's decision made pursuant to this subsection shall be a final administrative decision and may be reviewed as provided by A.R.S. § 12-901 et seq. and subsection (N).
- N. Request for rehearing or review:**
1. Unless the Director determines in his decision that good cause exists otherwise, a party dissatisfied with the decision may petition the Director for a rehearing or review of the decision for any of the following causes which materially affects the appellant's rights:
 - a. Irregularity in the proceedings of the hearing or appeal whereby the dissatisfied party was deprived of a fair hearing or appeal;
 - b. Misconduct of a party or the agency;
 - c. Newly discovered material evidence, which with reasonable diligence could not have been discovered and produced at the hearing;
 - d. That the decision is the result of passion or prejudice; or
 - e. That the decision is not justified by the evidence or is contrary to law.
 2. The Director may remand the case for eligibility decision, open the decision, order the taking of additional testimony or evidence before the hearing officer, amend findings of fact and conclusions of law or make new findings and conclusions, and render a new decision.
 3. The petition for review or rehearing shall be in writing and shall specify the grounds upon which the petition is based. The Director shall review the sufficiency of the evidence if the petition is made upon the ground that the decision is not justified by the evidence.
4. A petition for rehearing or review shall be filed not later than 15 days after the date of the Director's decision. The date of the Director's decision shall be the date of personal delivery to the party or the postmark date, whichever occurs first. In the event that a timely petition for rehearing or review is filed, the Director's decision shall not be considered a final administrative decision until the Director renders a final decision on the petition for rehearing. The final decision of the Director after consideration of a petition for rehearing or review shall be subject to review as provided by A.R.S. § 12-901 et seq.
- O. Failure to submit a grievance or appeal in a timely manner shall constitute a failure to exhaust administrative remedies required as a condition to seeking judicial relief.**
- R9-28-801. General Provisions for All Grievances and Appeals**
All grievances and appeals regarding ALTCS shall be filed and processed in accordance with A.A.C. R9-22-801, and all references in that rule to AHCCCS also shall apply to ALTCS. In eligibility appeals, ALTCS is the respondent.
- R9-28-802. Member Grievances**
- A. A member aggrieved by any adverse decision or action by a program contractor, subcontractor, noncontracting provider, nonprovider, or the Administration may file a grievance and request a hearing as specified in this Section. This Section shall not apply to actions or decisions affecting a member's eligibility.**
- B. Member grievances to program contractor:**
1. All grievances filed by member relating to the program contractor, subcontractor, noncontracting provider, or nonprovider shall be filed with the member's program contractor for review, investigation and resolution in accordance with the grievance requirements of this subsection and the applicable contract.
 2. All grievances shall be filed orally or in writing with the member's program contractor not later than 35 days after the date of such adverse decision or action. Grievances filed pursuant to this subsection shall state with particularity the factual and legal basis and the relief requested.
 3. The program contractor shall record and retain sufficient information to identify the grievant, date of receipt and nature of the grievance.
 4. A final decision shall be rendered by the program contractor on all grievances within 30 days of filing. A copy of the decision by the program contractor shall be personally delivered or mailed by certified mail to the member and by regular mail to all other parties and shall state the basis for the decision as well as the individual's right to appeal the decision to the Administration. The program contractor's decision shall specify the manner in which an appeal to the Administration may be filed.
 5. At the time of enrollment, each member shall be given information explaining grievance procedures available through the program contractor and through the Administration.
 6. This Section shall not apply to actions or decisions affecting a member's eligibility, preadmission screening decisions, or to actions or decisions that reduce a categorically eligible member's benefits as a result of changes in state or federal law.
- C. Member's grievance or appeal to Administration:**

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1. Member may appeal to and request a hearing from the AHCCCS Administration, Office of Grievance and Appeals, if:
 - a. The member files a written notice of appeal not more than 15 days after the date of the final decision of the program contractor. The date of the final decision shall be the date of personal delivery to the member or the postmark date of the certified mailing, whichever occurred first.
 - b. In the event that a decision was not timely rendered by the program contractor in accordance with the provisions of this Section, the member files a written notice of appeal based upon the program contractor's failure or refusal to timely decide the grievance.
 - c. The member has a grievance against the Administration and files a grievance not more than 35 days after the date of adverse decision or action by the Administration. Grievances filed pursuant to this subsection shall state with particularity the factual and legal basis therefor, and the relief requested.
2. If the Grievance and Appeal Division is unable to resolve the appeal to the appellant's satisfaction, a hearing shall be scheduled.
3. The Administration, in its sole discretion, may investigate the grievance and render a written decision prior to scheduling a hearing. A hearing shall be scheduled in the event the Administration elects not to investigate the grievance or upon the request for a hearing by any grievant subsequent to any such investigative decision by the Administration.

D. AHCCCS Hearing Officer decision:

1. The hearing shall be conducted before an AHCCCS Hearing Officer designated by the Director and held in accordance with A.R.S. §§ 41-1061 and 41-1062.
2. After the conclusion of the hearing, the AHCCCS hearing officer shall prepare written findings of fact and conclusions of law and render a recommended decision to the Director.

E. Decision of the Director:

1. After receipt of the hearing officer's recommended decision, the Director shall issue his decision in writing, which shall include findings of fact and conclusions of law, and unless otherwise provided by law, personally deliver or mail by certified mail a copy thereof to all parties at their last known residence or place of business. The decision shall notify any party adversely affected of the right to request rehearing or review.
2. Except as provided in subsection (F), the Director's decision made pursuant to this subsection shall be a final administrative decision and may be reviewed as provided by A.R.S. § 12-901 et seq. and subsection (F). Such a decision is not subject to judicial review unless the Director makes the finding provided for in subsection (F).

F. Request for Rehearing or Review:

1. Unless the Director determines in the decision that good cause exists otherwise, a party may petition the Director for rehearing or review of the decision for any of the following causes which materially affects the appellant's rights:
 - a. Irregularity in the proceedings of the hearing or appeal whereby the dissatisfied party was deprived of a fair hearing or appeal;
 - b. Misconduct of a party, the county or the agency;
 - c. Newly discovered material evidence, which with reasonable diligence could not have been discovered and produced at the hearing;

- d. That the decision is the result of passion or prejudice; or
- e. That the decision is not justified by the evidence or is contrary to law.

2. The Director may open the decision, order the taking of additional testimony or evidence before the hearing officer, amend findings of fact and conclusions of law or make new findings and conclusions, and render a new decision.
3. The petition for review or rehearing shall be in writing and shall specify the grounds upon which the petition is based. The Director shall review the sufficiency of the evidence if the petition is made upon the ground that the decision is not justified by the evidence.
4. A petition for rehearing or review shall be filed not later than 15 days after the date of the Director's decision. The date of the Director's decision shall be the date of personal delivery to the member or the postmark date, whichever occurs first. In the event that a timely petition for rehearing or review is filed, the Director's decision shall not be considered a final administrative decision until the Director renders a final decision on the petition for rehearing.

- G. Failure to submit a grievance and appeal in a timely manner shall constitute a failure to exhaust administrative remedies required as a condition to seeking a judicial relief.**

R9-28-802. Eligibility Appeals and Hearing Requests for Applicant or Recipients of ALTCS

- A. Adverse eligibility actions.** An applicant, eligible person, or member may appeal and request a hearing concerning any of the following adverse eligibility actions:

1. Denial of eligibility;
2. Discontinuance of eligibility;
3. Delay in the eligibility determination;
4. Adverse post-eligibility treatment of income; or
5. Adverse disability determination.

- B. The Administration shall provide notice of an adverse eligibility action to the affected individual by personal delivery or regular mail. For purposes of this Section, the date of the Notice of Adverse eligibility action shall be the date of personal delivery to the individual or the postmark date, if mailed.**

- C. Appeals and requests for hearing.**

1. An applicant, eligible person, member, or authorized representative may appeal and request a hearing regarding any adverse eligibility action by completing and submitting the ALTCS Request for Hearing form or by submitting a written request containing the following information:
 - a. The case name.
 - b. The adverse eligibility action being appealed, and
 - c. The reason for appeal.
2. The request for hearing shall be submitted within 20 days of a notice of denial or 10 days after the effective date of all other adverse actions by mailing or delivering it to either the eligibility office that rendered the adverse decision or directly to the Administration, Office of Grievance and Appeals. For this Section only, the date of the request for hearing shall be the postmark date, if mailed, or the date of personal delivery.

- D. Eligibility office responsibilities.**

1. Eligibility offices shall maintain a register that documents the dates on which ALTCS Requests for Hearing are submitted.
2. If requested, an eligibility office shall help an appellant or authorized representative to complete the ALTCS Request for Hearing form.

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3. ~~The prehearing summary shall be completed by the eligibility office and shall summarize the facts and factual basis for the adverse eligibility action.~~
4. ~~The eligibility office shall send to the Administration, Office of Grievance and Appeals:~~
 - a. ~~The prehearing summary;~~
 - b. ~~A copy of the case file;~~
 - c. ~~Documents pertinent to the adverse action; and~~
 - d. ~~The request for hearing. These materials must be received by the Administration, Office of Grievance and Appeals, not later than 10 days from the date of the receipt of the request for hearing. If the request for hearing is submitted directly to the Administration, Office of Grievance and Appeals, the eligibility office shall send the materials to the Office of Grievance and Appeals, not later than 10 days from the date of a request for the materials.~~

E. ALTCS coverage during the appeal process.

1. ~~Eligible persons or members appealing a discontinuance. A discontinuance is a termination of ALTCS benefits. For actions requiring 10 days' advance notice, an eligible person or member requesting a hearing before the effective date of the adverse action shall receive continued ALTCS benefits until an adverse decision on appeal is rendered.~~
2. ~~Applicants appealing a denial of ALTCS coverage:~~
 - a. ~~A denial is an adverse eligibility decision that finds an applicant ineligible for ALTCS benefits.~~
 - b. ~~An applicant may appeal a denial within the time-frame specified in subsection (C)(2). If the denial is overturned, the effective date of ALTCS coverage shall be established by the Director in accordance with applicable law.~~
3. ~~An eligible person or member whose benefits are continued under subsection (E)(1) may be financially liable for all ALTCS benefits received during a period of ineligibility, if a discontinuance decision is upheld by the Director.~~

R9-28-803. Nonmember Grievances

- A.** ~~An eligible but non-enrolled individual may file a written or oral grievance with the AHCCCS Administration, Office of Grievance and Appeals.~~
- B.** ~~The written grievance shall be filed with and received by the Administration not later than 35 days after the date of adverse decision or action being grieved.~~
- C.** ~~If the Grievance and Appeal Division is unable to resolve the grievance to the grievant's satisfaction, a hearing shall be conducted and decision rendered, in accordance with the applicable provisions of R9-28-802.~~
- D.** ~~Grievances that involve issues related to continuity or delivery of medical services shall be resolved as expeditiously as practicable considering the medical needs presented by the grievant.~~
- E.** ~~Failure to submit a grievance and appeal in a timely manner shall constitute a failure to exhaust administrative remedies required as a condition to seeking judicial relief.~~
- E.** ~~This Section shall not apply to actions or decisions affecting an individual's eligibility or preadmission screening, or to actions or decisions that reduce a categorically eligible individual's benefits as a result of changes in state or federal law.~~

R9-28-803. Grievances

~~All grievances regarding ALTCS shall be filed and processed in accordance with A.A.C. R9-22-804, and all references in that rule to AHCCCS also shall apply to ALTCS.~~

R9-28-804. Program Contractor, Provider, Noncontracting Provider, Nonprovider and County Grievances

- A.** ~~The provisions of this Section provide the exclusive manner through which program contractors, providers, noncontracting providers, nonproviders and counties may grieve against the Administration and program contractors in connection with any adverse action, decision or policy.~~
- B.** ~~Grievances against program contractor.~~
 1. ~~All grievances by counties, providers, noncontracting providers and nonproviders relating to an adverse decision or action by a program contractor shall be filed with the program contractor for review, investigation and resolution in accordance with the grievance requirements of this subsection and any applicable contract.~~
 2. ~~All grievances, excluding those challenging claim denials, shall be filed in writing with the program contractor not later than 35 days after the date of such adverse decision or action. All grievances challenging claim details shall be filed in writing with the program contractor not later than 12 months from the date of the service for which payment is claimed. The grievance shall state with particularity the factual and legal basis, and the relief requested. Failure to comply with the specificity requirement shall result in the denial of the grievance.~~
 3. ~~The program contractor shall record and retain sufficient information to identify the grievant, date of receipt and nature of the grievance.~~
 4. ~~A final decision shall be rendered by the program contractor within 30 days of filing, unless the parties agree to a longer period of time. A copy of the decision of the program contractor shall be personally delivered or mailed by certified mail to the grievant and by regular mail to all other parties and shall state the basis for the decision, as well as the party's right to appeal the decision to the Administration. The program contractor's decision shall specify the manner in which an appeal to the Administration may be filed.~~
- C.** ~~Grievances to the Administration.~~
 1. ~~Program contractors, counties, providers, noncontracting providers and nonproviders may grieve to the AHCCCS Administration, Office of Grievance and Appeals, if:~~
 - a. ~~The county, provider, noncontracting provider or nonprovider files a written notice of appeal with the Administration not more than 15 days after the decision of the program contractor rendered pursuant to subsection (B). The date of the final decision shall be the date of personal delivery or the postmarked date of certified mailing, whichever occurred first.~~
 - b. ~~A decision was not timely rendered by the program contractor in accordance with subsection (B) and the county, provider, noncontracting provider or nonprovider files a written notice of appeal based upon the program contractor's failure or refusal to timely decide the grievance.~~
 - c. ~~The program contractor, county, provider, noncontracting provider or nonprovider has a grievance against the Administration and files a grievance not more than 35 days after the date of adverse action, decision or policy implementation by the Administration; provided, however, any grievances challenging claim denials by the Administration shall be filed not more than 12 months after the date of the service for which payment is claimed. Any grievances challenging reinsurance claim denials by the Administration must be filed not more than 12 months after the close of the contract year in which~~

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the claim was incurred. If the claim is denied less than 35 days prior to the expiration of the 12 month time period, the dissatisfied party shall have 35 days from the date of the denial to file a grievance. Grievances filed pursuant to this subsection shall be in writing and state with particularity the factual and legal basis therefor, and the relief requested. Failure to comply with the specificity requirement shall result in the denial of the grievance.

2. The Administration, in its sole discretion, may investigate the grievance and render a written decision regarding the grievance or schedule the grievance for a hearing in accordance with the provisions of this Section.

D. Appeals. A party may appeal the Administration's grievance decision by filing a request for hearing with the Director. The request for hearing shall be filed not later than 15 days after the date of the Administration's grievance decision. The date of the grievance decision shall be the date of personal delivery to the grievant or the postmark date, whichever occurs first.

1. The hearing shall be conducted before an AHCCCS hearing officer designated by the Director and held in accordance with A.R.S. §§ 41-1061 and 41-1062.
2. After the conclusion of the hearing, the AHCCCS hearing officer shall prepare written findings of fact and conclusions of law and render a recommended decision to the Director.

E. Decision of the Director.

1. After receipt of the Hearing Officer's recommended decision, the Director shall issue his decision in writing, which shall include findings of fact and conclusions of law, and, unless otherwise provided by law, personally deliver or mail by certified mail a copy thereof to all parties at their last known residence or place of business. The Director shall notify any party adversely affected of the right to request rehearing or review.
2. Except as provided in subsection (F), the Director's decision, made pursuant to this subsection, shall be a final administrative decision and may be reviewed as provided by A.R.S. § 12-901 et seq. and subsection (F). Such a decision is not subject to judicial review unless the Director makes the finding provided for in subsection (F).

E. Request for rehearing or review.

1. Unless the Director determines in the decision that good cause exists otherwise, a party dissatisfied with the deci-

sion may petition the Director for rehearing or review of the decision for any of the following causes which materially affects the grievant's rights:

- a. Irregularity in the proceedings of the hearing or appeal whereby the dissatisfied party was deprived of a fair hearing or appeal;
- b. Misconduct of a party or the agency;
- c. Newly discovered material evidence, which with reasonable diligence could not have been discovered and produced at the hearing;
- d. That the decision is the result of passion or prejudice; or
- e. That the decision is not justified by the evidence or is contrary to law.

2. The Director may open the decision, order the taking of additional testimony or evidence before the hearing officer, amend findings of fact and conclusions of law or make new findings and conclusions, and render a new decision.

3. The petition for review or rehearing shall be in writing and shall specify the grounds upon which the petition is based. The Director shall review the sufficiency of the evidence if the petition is made upon the ground that the decision is not justified by the evidence.

4. A petition for rehearing or review shall be filed not later than 15 days after the date of the Director's decision. The date of the Director's decision shall be the date of personal delivery to the grievant or the postmark date, whichever occurs first. In the event that a timely petition for rehearing or review is filed, the Director's decision shall not be considered a final administrative decision until the Director renders a final decision on the petition for rehearing. The final decision of the Director after consideration of a petition for rehearing or review shall be subject to review as provided by A.R.S. § 12-901 et seq.

G. Pending final resolution of a grievance, appeal, or request for judicial review, a grieving program contractor shall proceed diligently with the performance of the contract and in accordance with the Administration's or Director's decision.

H. Failure to comply with the provisions of this Section shall constitute a failure to exhaust administrative remedies required as a condition to seeking judicial relief.