

State of Arizona  
House of Representatives  
Fifty-fourth Legislature  
Second Regular Session  
2020

**CHAPTER 17**  
**HOUSE BILL 2244**

AN ACT

AMENDING SECTIONS 36-2907 AND 36-2939, ARIZONA REVISED STATUTES; RELATING  
TO THE PROVISION OF TRIBAL HEALTHCARE DENTAL SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-2907, Arizona Revised Statutes, is amended to  
3 read:

4 36-2907. Covered health and medical services; modifications;  
5 related delivery of service requirements;  
6 definition

7 A. Subject to the limitations and exclusions specified in this  
8 section, contractors shall provide the following medically necessary  
9 health and medical services:

10 1. Inpatient hospital services that are ordinarily furnished by a  
11 hospital for the care and treatment of inpatients and that are provided  
12 under the direction of a physician or a primary care practitioner. For  
13 the purposes of this section, inpatient hospital services exclude services  
14 in an institution for tuberculosis or mental diseases unless authorized  
15 under an approved section 1115 waiver.

16 2. Outpatient health services that are ordinarily provided in  
17 hospitals, clinics, offices and other health care facilities by licensed  
18 health care providers. Outpatient health services include services  
19 provided by or under the direction of a physician or a primary care  
20 practitioner, including occupational therapy.

21 3. Other laboratory and X-ray services ordered by a physician or a  
22 primary care practitioner.

23 4. Medications that are ordered on prescription by a physician or a  
24 dentist licensed pursuant to title 32, chapter 11. Persons who are dually  
25 eligible for title XVIII and title XIX services must obtain available  
26 medications through a medicare licensed or certified medicare advantage  
27 prescription drug plan, a medicare prescription drug plan or any other  
28 entity authorized by medicare to provide a medicare part D prescription  
29 drug benefit.

30 5. Medical supplies, durable medical equipment, insulin pumps and  
31 prosthetic devices ordered by a physician or a primary care practitioner.  
32 Suppliers of durable medical equipment shall provide the administration  
33 with complete information about the identity of each person who has an  
34 ownership or controlling interest in their business and shall comply with  
35 federal bonding requirements in a manner prescribed by the administration.

36 6. For persons who are at least twenty-one years of age, treatment  
37 of medical conditions of the eye, excluding eye examinations for  
38 prescriptive lenses and the provision of prescriptive lenses.

39 7. Early and periodic health screening and diagnostic services as  
40 required by section 1905(r) of title XIX of the social security act for  
41 members who are under twenty-one years of age.

42 8. Family planning services that do not include abortion or  
43 abortion counseling. If a contractor elects not to provide family  
44 planning services, this election does not disqualify the contractor from  
45 delivering all other covered health and medical services under this

1 chapter. In that event, the administration may contract directly with  
2 another contractor, including an outpatient surgical center or a  
3 noncontracting provider, to deliver family planning services to a member  
4 who is enrolled with the contractor that elects not to provide family  
5 planning services.

6 9. Podiatry services that are performed by a podiatrist who is  
7 licensed pursuant to title 32, chapter 7 and ordered by a primary care  
8 physician or primary care practitioner.

9 10. Nonexperimental transplants approved for title XIX  
10 reimbursement.

11 11. DENTAL SERVICES AS FOLLOWS:

12 (a) EXCEPT AS PROVIDED IN SUBDIVISION (b) OF THIS PARAGRAPH, for  
13 persons who are at least twenty-one years of age, emergency dental care  
14 and extractions in an annual amount of not more than ~~one thousand dollars~~  
15 \$1,000 per member.

16 (b) SUBJECT TO APPROVAL BY THE CENTERS FOR MEDICARE AND MEDICAID  
17 SERVICES, FOR PERSONS TREATED AT AN INDIAN HEALTH SERVICE OR TRIBAL  
18 FACILITY, ADULT DENTAL SERVICES THAT ARE ELIGIBLE FOR A FEDERAL MEDICAL  
19 ASSISTANCE PERCENTAGE OF ONE HUNDRED PERCENT AND THAT ARE IN EXCESS OF THE  
20 LIMIT PRESCRIBED IN SUBDIVISION (a) OF THIS PARAGRAPH.

21 12. Ambulance and nonambulance transportation, except as provided  
22 in subsection G of this section.

23 13. Hospice care.

24 14. Orthotics, if all of the following apply:

25 (a) The use of the orthotic is medically necessary as the preferred  
26 treatment option consistent with medicare guidelines.

27 (b) The orthotic is less expensive than all other treatment options  
28 or surgical procedures to treat the same diagnosed condition.

29 (c) The orthotic is ordered by a physician or primary care  
30 practitioner.

31 B. The limitations and exclusions for health and medical services  
32 provided under this section are as follows:

33 1. Circumcision of newborn males is not a covered health and  
34 medical service.

35 2. For eligible persons who are at least twenty-one years of age:

36 (a) Outpatient health services do not include speech therapy.

37 (b) Prosthetic devices do not include hearing aids, dentures,  
38 bone-anchored hearing aids or cochlear implants. Prosthetic devices,  
39 except prosthetic implants, may be limited to ~~twelve thousand five hundred~~  
40 ~~dollars~~ \$12,500 per contract year.

41 (c) Percussive vests are not covered health and medical services.

42 (d) Durable medical equipment is limited to items covered by  
43 medicare.

44 (e) Nonexperimental transplants do not include pancreas-only  
45 transplants.

1 (f) Bariatric surgery procedures, including laparoscopic and open  
2 gastric bypass and restrictive procedures, are not covered health and  
3 medical services.

4 C. The system shall pay noncontracting providers only for health  
5 and medical services as prescribed in subsection A of this section and as  
6 prescribed by rule.

7 D. The director shall adopt rules necessary to limit, to the extent  
8 possible, the scope, duration and amount of services, including maximum  
9 limitations for inpatient services that are consistent with federal  
10 regulations under title XIX of the social security act (P.L. 89-97; 79  
11 Stat. 344; 42 United States Code section 1396 (1980)). To the extent  
12 possible and practicable, these rules shall provide for the prior approval  
13 of medically necessary services provided pursuant to this chapter.

14 E. The director shall make available home health services in lieu  
15 of hospitalization pursuant to contracts awarded under this article. For  
16 the purposes of this subsection, "home health services" means the  
17 provision of nursing services, home health aide services or medical  
18 supplies, equipment and appliances that are provided on a part-time or  
19 intermittent basis by a licensed home health agency within a member's  
20 residence based on the orders of a physician or a primary care  
21 practitioner. Home health agencies shall comply with the federal bonding  
22 requirements in a manner prescribed by the administration.

23 F. The director shall adopt rules for the coverage of behavioral  
24 health services for persons who are eligible under section 36-2901,  
25 paragraph 6, subdivision (a). The administration acting through the  
26 regional behavioral health authorities shall establish a diagnostic and  
27 evaluation program to which other state agencies shall refer children who  
28 are not already enrolled pursuant to this chapter and who may be in need  
29 of behavioral health services. In addition to an evaluation, the  
30 administration acting through regional behavioral health authorities shall  
31 also identify children who may be eligible under section 36-2901,  
32 paragraph 6, subdivision (a) or section 36-2931, paragraph 5 and shall  
33 refer the children to the appropriate agency responsible for making the  
34 final eligibility determination.

35 G. The director shall adopt rules **PROVIDING** for ~~the provision of~~  
36 transportation services and rules providing for copayment by members for  
37 transportation for other than emergency purposes. Subject to approval by  
38 the centers for medicare and medicaid services, nonemergency medical  
39 transportation shall not be provided except for stretcher vans and  
40 ambulance transportation. Prior authorization is required for  
41 transportation by stretcher van and for medically necessary ambulance  
42 transportation initiated pursuant to a physician's direction. Prior  
43 authorization is not required for medically necessary ambulance  
44 transportation services rendered to members or eligible persons initiated

1 by dialing telephone number 911 or other designated emergency response  
2 systems.

3 H. The director may adopt rules to allow the administration, at the  
4 director's discretion, to use a second opinion procedure under which  
5 surgery may not be eligible for coverage pursuant to this chapter without  
6 documentation as to need by at least two physicians or primary care  
7 practitioners.

8 I. If the director does not receive bids within the amounts  
9 budgeted or if at any time the amount remaining in the Arizona health care  
10 cost containment system fund is insufficient to pay for full contract  
11 services for the remainder of the contract term, the administration, on  
12 notification to system contractors at least thirty days in advance, may  
13 modify the list of services required under subsection A of this section  
14 for persons defined as eligible other than those persons defined pursuant  
15 to section 36-2901, paragraph 6, subdivision (a). The director may also  
16 suspend services or may limit categories of expense for services defined  
17 as optional pursuant to title XIX of the social security act (P.L. 89-97;  
18 79 Stat. 344; 42 United States Code section 1396 (1980)) for persons  
19 defined pursuant to section 36-2901, paragraph 6, subdivision (a). Such  
20 reductions or suspensions do not apply to the continuity of care for  
21 persons already receiving these services.

22 ~~J. Additional, reduced or modified hospitalization and medical care~~  
23 ~~benefits may be provided under the system to enrolled members who are~~  
24 ~~eligible pursuant to section 36-2901, paragraph 6, subdivision (b), (c),~~  
25 ~~(d) or (e).~~

26 ~~K.~~ J. All health and medical services provided under this article  
27 shall be provided in the geographic service area of the member, except:

28 1. Emergency services and specialty services provided pursuant to  
29 section 36-2908.

30 2. That the director may ~~permit~~ ALLOW the delivery of health and  
31 medical services in other than the geographic service area in this state  
32 or in an adjoining state if the director determines that medical practice  
33 patterns justify the delivery of services or a net reduction in  
34 transportation costs can reasonably be expected. Notwithstanding the  
35 definition of physician as prescribed in section 36-2901, if services are  
36 procured from a physician or primary care practitioner in an adjoining  
37 state, the physician or primary care practitioner shall be licensed to  
38 practice in that state pursuant to licensing statutes in that state THAT  
39 ARE similar to title 32, chapter 13, 15, 17 or 25 and shall complete a  
40 provider agreement for this state.

41 ~~L.~~ K. Covered outpatient services shall be subcontracted by a  
42 primary care physician or primary care practitioner to other licensed  
43 health care providers to the extent practicable for purposes including,  
44 but not limited to, making health care services available to underserved

1 areas, reducing costs of providing medical care and reducing  
2 transportation costs.

3 ~~M.~~ L. The director shall adopt rules that prescribe the  
4 coordination of medical care for persons who are eligible for system  
5 services. The rules shall include provisions for ~~the transfer of~~  
6 TRANSFERRING patients, ~~the transfer of~~ AND medical records and ~~the~~  
7 ~~initiation of~~ INITIATING medical care.

8 ~~N.~~ M. For the purposes of this section, "ambulance" has the same  
9 meaning prescribed in section 36-2201.

10 Sec. 2. Section 36-2939, Arizona Revised Statutes, is amended to  
11 read:

12 36-2939. Long-term care system services

13 A. The following services shall be provided by the program  
14 contractors to members who are determined to need institutional services  
15 pursuant to this article:

16 1. Nursing facility services other than services in an institution  
17 for tuberculosis or mental disease.

18 2. Notwithstanding any other law, behavioral health services if  
19 these services are not duplicative of long-term care services provided as  
20 of January 30, 1993 under this subsection and are authorized by the  
21 program contractor through the long-term care case management system. If  
22 the administration is the program contractor, the administration may  
23 authorize these services.

24 3. Hospice services. For the purposes of this paragraph, "hospice"  
25 means a program of palliative and supportive care for terminally ill  
26 members and their families or caregivers.

27 4. Case management services as provided in section 36-2938.

28 5. Health and medical services as provided in section 36-2907.

29 6. Dental services AS FOLLOWS:

30 (a) EXCEPT AS PROVIDED IN SUBDIVISION (b) OF THIS PARAGRAPH, in an  
31 annual amount of not more than ~~one thousand dollars~~ \$1,000 per member.

32 (b) SUBJECT TO APPROVAL BY THE CENTERS FOR MEDICARE AND MEDICAID  
33 SERVICES, FOR PERSONS TREATED AT AN INDIAN HEALTH SERVICE OR TRIBAL  
34 FACILITY, ADULT DENTAL SERVICES THAT ARE ELIGIBLE FOR A FEDERAL MEDICAL  
35 ASSISTANCE PERCENTAGE OF ONE HUNDRED PERCENT AND THAT ARE IN EXCESS OF THE  
36 LIMIT PRESCRIBED IN SUBDIVISION (a) OF THIS PARAGRAPH.

37 B. In addition to the services prescribed in subsection A of this  
38 section, the department, as a program contractor, shall provide the  
39 following services if appropriate to members who have a developmental  
40 disability as defined in section 36-551 and who are determined to need  
41 institutional services pursuant to this article:

42 1. Intermediate care facility services for a member who has a  
43 developmental disability as defined in section 36-551. For purposes of  
44 this article, a facility shall meet all federally approved standards and  
45 may only include the Arizona training program facilities, a state owned

1 and operated service center, state owned or operated community residential  
2 settings and private facilities that contract with the department.

3 2. Home and community based services that may be provided in a  
4 member's home, at an alternative residential setting as prescribed in  
5 section 36-591 or at other behavioral health alternative residential  
6 facilities licensed by the department of health services and approved by  
7 the director of the Arizona health care cost containment system  
8 administration and that may include:

9 (a) Home health, which means the provision of nursing services,  
10 skilled home health aide services, home health aide services or medical  
11 supplies, equipment and appliances, that are provided on a part-time or  
12 intermittent basis by a licensed home health agency within a member's  
13 residence based on a physician's orders and in accordance with federal  
14 law. Physical therapy, occupational therapy, or speech and audiology  
15 services provided by a home health agency may be provided in accordance  
16 with federal law. Home health agencies shall comply with federal bonding  
17 requirements in a manner prescribed by the administration.

18 (b) Skilled home health aide, which means a home health service  
19 ordered by a physician on the member's plan of care and provided by a  
20 licensed nursing assistant under the supervision of a registered nurse  
21 pursuant to subsection G of this section.

22 (c) Home health aide, which means a service that provides  
23 intermittent health maintenance, continued treatment or monitoring of a  
24 health condition and supportive care for activities of daily living  
25 provided within a member's residence.

26 (d) Homemaker, which means a service that provides assistance in  
27 the performance of activities related to household maintenance within a  
28 member's residence.

29 (e) Personal care, which means a service that provides assistance  
30 to meet essential physical needs within a member's residence.

31 (f) Day care for persons with developmental disabilities, which  
32 means a service that provides planned care supervision and activities,  
33 personal care, activities of daily living skills training and habilitation  
34 services in a group setting during a portion of a continuous  
35 twenty-four-hour period.

36 (g) Habilitation, which means the provision of physical therapy,  
37 occupational therapy, speech or audiology services or training in  
38 independent living, special developmental skills, sensory-motor  
39 development, behavior intervention, and orientation and mobility in  
40 accordance with federal law.

41 (h) Respite care, which means a service that provides short-term  
42 care and supervision available on a twenty-four-hour basis.

43 (i) Transportation, which means a service that provides or assists  
44 in obtaining transportation for the member.

1 (j) Other services or licensed or certified settings approved by  
2 the director.

3 C. In addition to services prescribed in subsection A of this  
4 section, home and community based services may be provided in a member's  
5 home, in an adult foster care home as prescribed in section 36-401, in an  
6 assisted living home or assisted living center as defined in section  
7 36-401 or in a level one or level two behavioral health alternative  
8 residential facility approved by the director by program contractors to  
9 all members who do not have a developmental disability as defined in  
10 section 36-551 and are determined to need institutional services pursuant  
11 to this article. Members residing in an assisted living center must be  
12 provided the choice of single occupancy. The director may also approve  
13 other licensed residential facilities as appropriate on a case-by-case  
14 basis for traumatic brain injured members. Home and community based  
15 services may include the following:

16 1. Home health, which means the provision of nursing services, home  
17 health aide services or medical supplies, equipment and appliances, that  
18 are provided on a part-time or intermittent basis by a licensed home  
19 health agency within a member's residence based on a physician's orders  
20 and in accordance with federal law. Physical therapy, occupational  
21 therapy, or speech and audiology services provided by a home health agency  
22 may be provided in accordance with federal law. Home health agencies  
23 shall comply with federal bonding requirements in a manner prescribed by  
24 the administration.

25 2. Home health aide, which means a service that provides  
26 intermittent health maintenance, continued treatment or monitoring of a  
27 health condition and supportive care for activities of daily living  
28 provided within a member's residence.

29 3. Homemaker, which means a service that provides assistance in the  
30 performance of activities related to household maintenance within a  
31 member's residence.

32 4. Personal care, which means a service that provides assistance to  
33 meet essential physical needs within a member's residence.

34 5. Adult day health, which means a service that provides planned  
35 care supervision and activities, personal care, personal living skills  
36 training, meals and health monitoring in a group setting during a portion  
37 of a continuous twenty-four-hour period. Adult day health may also  
38 include preventive, therapeutic and restorative health related services  
39 that do not include behavioral health services.

40 6. Habilitation, which means the provision of physical therapy,  
41 occupational therapy, speech or audiology services or training in  
42 independent living, special developmental skills, sensory-motor  
43 development, behavior intervention, and orientation and mobility in  
44 accordance with federal law.

1           7. Respite care, which means a service that provides short-term  
2 care and supervision available on a twenty-four-hour basis.

3           8. Transportation, which means a service that provides or assists  
4 in obtaining transportation for the member.

5           9. Home delivered meals, which means a service that provides for a  
6 nutritious meal that contains at least one-third of the recommended  
7 dietary allowance for an individual and that is delivered to the member's  
8 residence.

9           10. Other services or licensed or certified settings approved by  
10 the director.

11           D. The amount of ~~money~~ MONIES expended by program contractors on  
12 home and community based services pursuant to subsection C of this section  
13 shall be limited by the director in accordance with the federal monies  
14 made available to this state for home and community based services  
15 pursuant to subsection C of this section. The director shall establish  
16 methods for ~~the allocation of~~ ALLOCATING monies for home and community  
17 based services to program contractors and shall monitor expenditures on  
18 home and community based services by program contractors.

19           E. Notwithstanding subsections A, B, C, F and G of this section, a  
20 service may not be provided that does not qualify for federal monies  
21 available under title XIX of the social security act or the section 1115  
22 waiver.

23           F. In addition to services provided pursuant to subsections A, B,  
24 and C of this section, the director may implement a demonstration project  
25 to provide home and community based services to special populations,  
26 including persons with disabilities who are eighteen years of age or  
27 younger, are medically fragile, reside at home and would be eligible for  
28 supplemental security income for the aged, blind or disabled or the state  
29 supplemental payment program, except for the amount of their parent's  
30 income or resources. In implementing this project, the director may  
31 provide for parental contributions for the care of their child.

32           G. In addition to services provided pursuant to subsections A, B, C  
33 and F of this section, the director shall implement a program under which  
34 skilled home health aide services may be provided to members who have  
35 developmental disabilities, who are under eighteen years of age and who  
36 are eligible to receive continuous skilled nursing or skilled nursing  
37 respite care services pursuant to chapter 5.1, article 1 of this title by  
38 a parent, guardian or family member who is a licensed nursing assistant  
39 employed by a medicare-certified home health agency service provider. The  
40 director shall request any necessary approvals from the centers for  
41 medicare and medicaid services to implement this subsection and to qualify  
42 for federal monies available under title XIX of the social security act or  
43 the section 1115 waiver.

1           H. Subject to section 36-562, the administration by rule shall  
2 prescribe a deductible schedule for programs provided to members who are  
3 eligible pursuant to subsection B of this section, except that the  
4 administration shall implement a deductible based on family income. In  
5 determining deductible amounts and whether a family is required to have  
6 deductibles, the department shall use adjusted gross income. Families  
7 whose adjusted gross income is at least four hundred percent and less than  
8 or equal to five hundred percent of the federal poverty guidelines shall  
9 have a deductible of two percent of adjusted gross income. Families whose  
10 adjusted gross income is more than five hundred percent of adjusted gross  
11 income shall have a deductible of four percent of adjusted gross income.  
12 Only families whose children are under eighteen years of age and who are  
13 members who are eligible pursuant to subsection B of this section may be  
14 required to have a deductible for services. For the purposes of this  
15 subsection, "deductible" means an amount a family, whose children are  
16 under eighteen years of age and who are members who are eligible pursuant  
17 to subsection B of this section, pays for services, other than  
18 departmental case management and acute care services, before the  
19 department will pay for services other than departmental case management  
20 and acute care services.

21           Sec. 3. AHCCCS: federal authorization; adult dental services

22           The Arizona health care cost containment system administration shall  
23 seek federal authorization to reimburse the Indian health services and  
24 tribal facilities to cover the cost of adult dental services that are  
25 eligible for a federal medical assistance percentage of one hundred  
26 percent, that are in excess of the limits prescribed in sections 36-2907  
27 and 36-2939, Arizona Revised Statutes, as amended by this act, and that  
28 are received through these entities.

APPROVED BY THE GOVERNOR MARCH 23, 2020.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 23, 2020.