

NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

NOTICE OF FINAL EXEMPT RULEMAKING

TITLE 13. PUBLIC SAFETY

CHAPTER 11. BOARD OF FINGERPRINTING

[R06-467]

PREAMBLE

- 1. Sections Affected**

R13-11-109	<u>Rulemaking Action</u>
R13-11-110	New Section
R13-11-111	New Section
R13-11-112	Renumber
R13-11-113	Renumber
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 41-619.53(A)(2) and -1062(B)
Implementing statute: A.R.S. § 41-619.55
- 3. The effective date of the rules:**

December 6, 2006
- 4. A list of all previous notices appearing in the Register addressing the exempt rule:**

Notice of Proposed Exempt Rulemaking: 12 A.A.R. 4020, October 27, 2006
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Dennis Seavers, Executive Director
Address:	Arizona Board of Fingerprinting Mail Code 185 P.O. Box 6129 Phoenix, AZ 85005-6129
E-mail:	dennis.seavers@azbof.gov
Telephone:	(602) 322-8593
Fax:	(602) 322-8594
- 6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from regular rulemaking procedures:**

The proposed rules make two changes to the current rules.

First, the Board is adopting a rule prohibiting *ex parte* communication relevant to the merits of a good cause exception proceeding. The rule also prescribes a process for placing any prohibited, *ex parte* communications on the record of the proceeding.

Second, the Board is adopting a rule on rehearing or reviewing a decision or order that results from an administrative hearing. This rule, which is required by A.R.S. §§ 41-1062(B), describes the process for an appellant to submit a request for rehearing or review and obliges the Board to grant a request for one of the following reasons materially affecting the rights of the applicant:

 1. The findings of fact, conclusions of law, order, or decision are not supported by the evidence or are contrary to law
 2. The appellant was deprived of a fair hearing due to irregularity in the proceedings, abuse of discretion, or misconduct by the hearing officer

Notices of Exempt Rulemaking

- 3. Newly discovered material evidence exists that could have a bearing on the decision and that, with reasonable diligence, could not have been discovered and produced earlier
- 4. Error in admission or rejection of evidence or other errors of law occurring at the hearing.

The rule identifies the options available to the Board for responding to a request for review or rehearing. The rule also explains the parameters for conducting a rehearing or review and requires the Board to specify the basis for its decision.

A.R.S. § 41-619.53(A)(2) exempts the proposed rules from A.R.S. Title 41, Chapter 6. The Board of Fingerprinting will allow time for reasonable public notice and comments on the rules and will file the final rule with the Office of the Secretary of State.

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

None

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

Not applicable

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

Not applicable (see A.R.S. § 41-619.53(A)(2))

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

Not applicable

11. A summary of the comments made regarding the rule and the agency response to them:

The Board offered a 30-day period for public comments. There were no public comments on the proposed rules.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:

No

15. The full text of the rules follows:

TITLE 13. PUBLIC SAFETY

CHAPTER 11. BOARD OF FINGERPRINTING

ARTICLE 1. BOARD OF FINGERPRINTING

Section

R13-11-109. Ex Parte Communications

R13-11-110. Rehearing or Review of Decision

~~R13-11-109.~~R13-11-111. Notification of Decision for Good Cause Exception

~~R13-11-110.~~R13-11-112. Confidentiality

~~R13-11-111.~~R13-11-113. Fees

ARTICLE 1. BOARD OF FINGERPRINTING

R13-11-109. Ex Parte Communications

- A. In any good cause exception case, except to the extent required for disposition of *ex parte* matters as authorized by law or these rules of procedure:
 - 1. No interested person outside the Board may make or knowingly cause to be made to any Board members, hearing officer, or other employee or consultant who may reasonably be expected to be involved in the decisional process of the proceeding, an *ex parte* communication relevant to the merits of the proceeding;
 - 2. No Board member, hearing officer, or other employee or consultant who is or may be reasonably expected to be involved in the decisional process of the good cause exception determination, may make or knowingly cause to be

Notices of Exempt Rulemaking

- made to any interested person outside the Board an *ex parte* communication relevant to the merits of the determination.
- B. A Board member, hearing officer, or other employee or consultant who is or may be reasonably expected to be involved in the decisional process of the good cause exception determination, who receives, makes, or knowingly causes to be made a communication prohibited by this rule, must place on the record of the proceeding and serve on all parties to the proceeding:
 - 1. All prohibited written communications;
 - 2. Memoranda stating the substance of all prohibited oral communications; and
 - 3. All written responses, and memoranda stating the substance of all oral responses, to the communications described in paragraphs 1 and 2 of this subsection.
 - C. Upon receipt of a communication made or knowingly caused to be made by a party in violation of this Section, the Board or its hearing officer, to the extent consistent with the interests of justice and the policy of the underlying statutes and rules, may require the party to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.
 - D. The provisions of this Section apply beginning when the request for a good cause exception is filed in accordance with R13-11-103.
 - E. For the purposes of this Section:
 - 1. "Person outside the Board" means any person other than a Board member, employee or consultant of the Board, or attorney representing the Board in its adjudicatory role.
 - 2. "*Ex parte* communication" means an oral or written communication not on the administrative record and not the subject of reasonable prior notice to all parties.

R13-11-110. Rehearing or Review of Decision

- A. An appellant may seek a review or rehearing of a Board decision that results from an administrative hearing by submitting a written request for a review or rehearing to the Board within 30 days from the date of service of the decision. The Board must grant a request for review or rehearing for any of the following reasons materially affecting the rights of the appellant:
 - 1. The findings of fact, conclusions of law, or decision are not supported by the evidence or are contrary to law;
 - 2. The appellant was deprived of a fair hearing due to irregularity in the proceedings, abuse of discretion, or misconduct by the hearing officer;
 - 3. Newly discovered material evidence exists that could have a bearing on the decision and that, with reasonable diligence, could not have been discovered and produced earlier; or
 - 4. Error in admission or rejection of evidence or other errors of law occurring at the hearing.
- B. The request must specify the grounds for a review or rehearing and must provide reasonable evidence that the appellant's rights were materially affected.
- C. The Board may grant a rehearing or review for any of the reasons in subsection A. The Board or its hearing officer may take additional testimony; amend or make new findings of fact and conclusions of law; and affirm, modify, or reverse the original decision.
- D. A rehearing or review, if granted, must be a rehearing or review only of the issue upon which the decision is found erroneous. An order granting or denying a rehearing or review must specify the basis for the order.

~~R13-11-109~~**R13-11-111. Notification of Decision for Good Cause Exception**

- A. No change
- B. No change

~~R13-11-110~~, ~~R13-11-112~~. **Confidentiality**

No change

~~R13-11-111~~**R13-11-113. Fees**

- A. No change
- B. No change
- C. No change

NOTICE OF FINAL EXEMPT RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
CHILDREN'S HEALTH INSURANCE PROGRAM**

[R06-482]

Notices of Exempt Rulemaking

PREAMBLE

- 1. Sections Affected**

R9-31-1402	<u>Rulemaking Action</u>
R9-31-1701	Amend
R9-31-1704	Amend
R9-31-1724	Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 36-2903.01 and 36-2986, 36-2983
Implementing statute: Laws 2006, Ch. 331, § 32
- 3. The effective date of the rules:**

January 1, 2007
- 4. A list of all previous notices appearing in the Register addressing the exempt rule:**

None
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Mariaelena Ugarte
Address:	AHCCCS Office of Administrative Legal Services 701 E. Jefferson, Mail Drop 6200 Phoenix, AZ 85034
Telephone:	(602) 417-4693
Fax:	(602) 253-9115
E-mail:	AHCCCSrules@azahcccs.gov
- 6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:**

Laws 2006, Ch. 331, § 32 permits the continuation of the HIFA Parents program with a change in the premium amount. This session law required changes in the percentiles reflected in rule and how the premium would be calculated.

This rulemaking is exempt from the provisions of Title 41, Chapter 6 under Laws 2006, Ch. 331, § 28.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The Administration did not review any study relevant to this rule.
- 8. 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
- 9. The summary of the economic, small business, and consumer impact:**

Not applicable
- 10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

Not applicable
- 11. A summary of the comments made regarding rule, and the agency response to them:**

No public comments were received.
- 12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable
- 13. Incorporations by reference and their location in the rules:**

No incorporations by reference
- 14. Was this rule previously adopted as an emergency rule?**

No

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
CHILDREN'S HEALTH INSURANCE PROGRAM**

ARTICLE 14. PREMIUMS FOR A CHILD DETERMINED ELIGIBLE UNDER ARTICLE 3

Section

R9-31-1402. Premium Amount for a Member who is a Child Determined Eligible Under Article 3 of This Chapter

ARTICLE 17. ELIGIBILITY, ENROLLMENT AND COST SHARING FOR A PARENT

Section

R9-31-1701. General

R9-31-1704. Income

R9-31-1724. Premium and Enrollment Fees

ARTICLE 14. PREMIUMS FOR A CHILD DETERMINED ELIGIBLE UNDER ARTICLE 3

R9-31-1402. Premium Amount for a Member who is a Child Determined Eligible Under Article 3 of This Chapter

- A. For the purposes of this Article, a premium is a monthly amount that an enrolled member pays to the Administration to remain eligible for Title XXI.
- B. When the household income is greater than 100 percent of the FPL and less than or equal to 150 percent of the FPL, the monthly premium is \$10 for one eligible child and \$15 for two or more eligible children.
- C. When household income is greater than 150 percent of the FPL and less than or equal to 175 percent of the FPL, the monthly premium payment is \$20 for one eligible child and \$30 for two or more eligible children.
- D. When household income is greater than 175 percent of the FPL and less than or equal to 200 percent of the FPL, the monthly premium is \$25 for one eligible child and \$35 for two or more eligible children.
- E. A household's premium payments as specified in this Section shall not exceed five percent of a household's gross income.
- F. A member's newborn is enrolled immediately upon the Administration receiving notification of the child's birth. Upon enrollment, the household's premium is redetermined.
- G. To remain eligible, the premium amount shall be paid according to this Article.
- H. Native Americans are exempt from paying premiums.
- I. When a premium is paid for a household including the parents of a child eligible under Article 3 as described in Article 17, no separate premium is charged for the child under this Section.

ARTICLE 17. ELIGIBILITY, ENROLLMENT AND COST SHARING FOR A PARENT

R9-31-1701. General

- A. Purpose. This Article contains the criteria to determine the eligibility, enrollment, and cost sharing for a parent under A.R.S. §§ 36-2982, 36-2983 and Laws ~~2004, Ch. 249, § 13~~ 2006, Ch. 331, § 32. Unless otherwise noted in this Chapter, the provisions of this Chapter apply to a parent eligible under this Article.
- B. Expenditure limit and enrollment
 - 1. Eligibility of a parent shall be based on the FPL established in Laws ~~2004, Ch. 249, § 13~~ 2006, Ch. 331, § 32, subject to the availability of monies. If the Director determines that monies are insufficient for the program, the eligibility agency shall suspend accepting new applications and shall deny all pending applications.
 - 2. If the federal government eliminates federal funding for the program, the eligibility agency shall deny all pending applications and shall discontinue an eligible parent after providing advance notice that the program shall terminate under A.R.S. § 36-2985.
 - 3. A parent is not entitled to a hearing under R9-31-1724 of this Article, if the program is suspended or terminated.
- C. Definition
 - 1. For the purposes of this Article, a child is:
 - a. A child, except for a deemed newborn, under A.R.S. § 36-2901(6)(a)(ii), who is determined eligible under 9 A.A.C. 22, Article 14, or
 - b. A child, except for a deemed newborn, under A.R.S. § 36-2981(6) who is determined eligible under Article 3 of this Chapter. A child in the guaranteed enrollment period under R9-31-307 or a newborn under R9-31-309, is not considered a child under this Article.
 - 2. For the purposes of this Article, a parent is defined under Laws ~~2004, Ch. 249, § 13~~ 2006, Ch. 331, § 32 and also includes a stepparent. A parent of an ~~18-year-old~~ 18-year-old child under subsection (C)(1)(a) is not eligible under

this Article.

3. For the purposes of this Article, eligibility agency means either DES or the Administration, whichever agency made the eligibility determination for the child.

D. Services. A parent eligible under this Article shall receive medically necessary services under 9 A.A.C. 22, Article 2.

R9-31-1704. Income

To be eligible, the countable income shall be determined under R9-31-304 and shall not exceed the percentage of FPL established in Laws ~~2004, Ch. 249, § 13~~ 2006, Ch. 331, § 32. For a parent of a child under R9-31-1701(C)(1)(a), the countable income shall include a stepparent's income if the stepparent is applying.

R9-31-1724. Premium and Enrollment Fees

A. For the purposes of this Article:

1. A premium is a monthly payment that an enrolled member pays to the Administration to remain eligible.
2. An enrollment fee is a payment equal to the amount of one month's premium which shall be paid to the Administration by a member who is a parent determined eligible under this Article. The enrollment fee and the first month's premium will be billed and due concurrently with the first month's payment.
3. To remain eligible, a parent shall pay the premium amount and enrollment fee according to this Article.

B. Premiums

- ~~1. When countable income is less than or equal to 150 percent of the FPL, the monthly premium for each eligible parent is \$15 per month.~~
- ~~2. When countable income is greater than 150 percent of the FPL and less than or equal to 175 percent of the FPL, the monthly premium for each eligible parent is \$20 per month.~~
- ~~3. When countable income is greater than 175 percent of the FPL and less than or equal to 200 percent of the FPL, the monthly premium for each eligible parent is \$25 per month.~~
- ~~4. Native Americans are exempt from paying premiums.~~

B. Premiums

1. When countable income is equal to or greater than 100 percent but less than 150 percent of the FPL, the monthly premium for the family is three percent of the countable income.
2. When countable income is equal to or greater than 150 percent but less than 175 percent of the FPL, the monthly premium for the family is four percent of the countable income.
3. When countable income is equal to or greater than 175 percent but less than or equal to 200 percent of the FPL, the monthly premium for the family is five percent of the countable income.
4. Native Americans are exempt from paying premiums.
5. When a premium is paid for a household including the parents of a child eligible under Article 3 as described in Article 17, no separate premium is charged for the child under this Section.

C. Enrollment Fees

1. A parent enrolled on or after January 1, 2005 will be charged an enrollment fee.
 - a. If a parent who has paid the enrollment fee does not receive coverage under this Article for a period of at least 24 months, the parent will be charged another enrollment fee if the parent is approved again under this Article.
 - b. If a parent who has paid the enrollment fee is discontinued under this Article for a period of less than 24 months, the parent will not be charged an enrollment fee when the parent is approved again.
2. A parent who was enrolled before January 1, 2005 will not be charged an enrollment fee unless the parent is discontinued under this Article and approved again.
3. Native Americans are exempt from paying the enrollment fee.
4. The enrollment fee amount:
 - a. For each eligible parent is \$15 when countable income is less than or equal to 150 percent of the FPL.
 - b. For each eligible parent is \$20 when countable income is greater than 150 percent of the FPL and less than or equal to 175 percent of the FPL.
 - c. For each eligible parent is \$25 when countable income is greater than 175 percent of the FPL and less than or equal to 200 percent of the FPL.