

## 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 PROPOSED EXEMPT RULEMAKING

#### TITLE 9. HEALTH SERVICES

#### CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

*Editor's Note: The following Notice of Exempt Rulemaking was reviewed per Laws 2010, Ch. 287, § 18. (See the text of § 18 on page 432.) The Governor's Office authorized the notice to proceed through the rulemaking process on February 28, 2011.*

[R11-25]

#### PREAMBLE

- 1. Sections Affected**  
R9-22-1442
- Rulemaking Action**  
New Section
- 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, 36-2903.01  
Implementing statute: A.R.S. § 36-2901.04; Arizona Laws 2010, 7th Special Session, Ch. 10, § 34; Arizona Laws 2011, 1st Special Session, Ch. 1, § 1(B)
- 3. The proposed effective date of the rules:**  
May 1, 2011
- 4. A list of all previous notices appearing in the Register addressing the proposed exempt rule:**  
None
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Written comments concerning this proposed rule may be submitted to the AHCCCS Administration or submitted electronically via the AHCCCS web site [www.azahcccs.gov](http://www.azahcccs.gov). Submitting comments via the web site is recommended. All comments must be received no later than 5:00 p.m. April 18, 2011.  
Name: Mariaelena Ugarte  
Address: AHCCCS  
Office of Administrative and Legal Services  
701 E. Jefferson St., Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4693  
Fax: (602) 253-9115  
E-mail: AHCCCSrules@azahcccs.gov
- 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 AHCCCS Administration is initiating this proposed exempt rulemaking to comply with the requirement that the Administration adopt rules regarding eligibility necessary to implement a program within available appropriations. Specifically, the Administration is proposing to phase out eligibility for Medical Expense Deduction (MED) coverage. The Administration intends to stop all new approvals for persons under the MED program with eligibility effective dates on or after May 1, 2011. Because any single period of eligibility is limited to the remainder of the month in which eligibility is determined plus five additional months under A.R.S. § 2901.04(F), no one will remain eligible for the MED program after September 30, 2011. The AHCCCS Administration does not intend to establish a waiting list for persons who would be eligible for MED but for this rule.

Notices of Exempt Rulemaking

Arizona Laws 2010, 7th Special Session, Ch. 10, § 34, reads:

“The Arizona health care cost containment system is exempt from the rule making requirements of title 41, chapter 6, Arizona Revised Statutes, for two years after the effective date of this act, for the following purposes:

1. Implementing section 36-2907, Arizona Revised Statutes, as amended by this act, and for the purpose of making changes to the amount, duration or scope of services provided pursuant to section 36-2907, subsection D, Arizona Revised Statutes.
2. Establishing and maintaining rules regarding standards, methods and procedures for determining eligibility necessary to implement a program within the available appropriation. The agency shall provide public notice and an opportunity for public comment on proposed rules at least thirty days before rules are adopted or amended pursuant to this paragraph.”

Arizona Laws 2011, 1st Special Session, Ch. 1, § 1(B), provides:

“... the Arizona health care cost containment system administration shall adopt rules regarding standards, methods and procedures for determining eligibility necessary to implement a program within the monies available from the Arizona tobacco litigation settlement fund established by section 36-2901.02, Arizona Revised Statutes, the proposition 204 protection account established by section 36-778, Arizona Revised Statutes, and any other legislative appropriation and federal monies made available for the support of the program. To the extent that monies available for the program established pursuant to this subsection are insufficient to fund all existing programs, the administration, subject to approval by the secretary of the United States department of health and human services, may suspend any programs or eligibility for any persons or categories of persons established under title 36, chapter 29, Arizona Revised Statutes.”

Section 2 of that Act exempted the AHCCCS Administration from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, for two years after the effective date of the Act.

The State Fiscal Year 2012 Executive Budget Recommendation includes a State Fiscal Year 2011 supplement appropriation of \$37.8 million for a shortfall in the General Fund monies necessary to continue the AHCCCS program through the end of the current fiscal year, June 30, 2011. That same Executive Budget Recommendation forecasts a \$1.1 billion loss of federal financial support for the program during State Fiscal Year 2012 due to a change in the federal formula for calculating the relative percent of state and federal financial contributions toward the program. The Medical Expense Deduction eligibility category was established as Arizona Laws 2001, Ch. 344, § 36 which added A.R.S. § 36-2901.04. It was adopted by the Legislature, not by ballot initiative. As such, it is not subject to the “voter protection” provisions of Article IV, Section 1 of the Arizona Constitution.

By letter dated February 15, 2011 from the secretary of the United States Department of Health and Human Services (“the Secretary”) to the governor of Arizona, the state was informed that it could, consistent with federal requirements, eliminate certain eligibility groups and that, by doing so, the state would not be in violation of the “maintenance of effort” requirements of 42 U.S.C. 1396a(gg) if it did not renew a request under 42 U.S.C. 1315 for authority (the Demonstration Project) to include certain eligibility groups in the state’s Medicaid program. Those eligibility groups include the MED program. The state is electing not to seek authority under any future Demonstration Project for coverage of the MED population. Federal authority for inclusion of this population under the Medicaid program will end with the current Demonstration Project which expires September 30, 2011.

The Secretary’s letter also provides that AHCCCS has the option of eliminating coverage for certain persons currently covered under the Demonstration Project who are not aged, blind, disabled, a child or a specified caregiver relative. This group is known as “AHCCCS Care” and is often referred to informally as “childless adults.” This proposed rulemaking does not effect the AHCCCS Care population.

Under the Special Terms and Conditions of the current Demonstration Project, if the state does not seek authority to continue coverage for the MED program beyond September 30, 2011, the state must stop enrolling new individuals and families into that program during such period as specified in the Demonstration phase-out plan. As a result, this proposed rule prohibits the Department of Economic Security (the agency that would otherwise determine eligibility for MED) from making any new determinations of MED after April 30, 2011 unless the application for assistance is dated prior to May 1, 2011. With respect to applications that are pending as of that date, the Department will complete the eligibility determination process, but will only approve MED eligibility for persons that meet all eligibility criteria before May 1, 2011.

In addition to the “maintenance of eligibility” requirement in 42 U.S.C. 1396a(gg), section 5001(f) of Public Law 111-5, the American Recovery and Reinvestment Act of 2009 (ARRA), contains a similar provision. This proposed rule may be withdrawn if the Secretary informs the state that prohibiting new MED enrollment as described in this proposed rule violates the maintenance of eligibility requires of ARRA. The AHCCCS Administration believes such an interpretation by the Secretary of ARRA is unlikely.

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

None

Notices of Exempt Rulemaking

**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:**

The Administration will not be making any new eligibility determinations for the MED population with eligibility effective dates on and after May 1, 2011. There are currently 5,000 to 6,000 members in this program. For persons who have eligibility effective dates before May 1, 2011, eligibility will continue for the remainder of the month in which eligibility is determined up to the next five continuous months.

The State Fiscal Year 2012 Executive Budget Recommendation includes a State Fiscal Year 2011 supplement appropriation of \$37.8 million for a shortfall in the General Fund monies necessary to continue the AHCCCS program through the end of the current fiscal year, June 30, 2011. That same Executive Budget Recommendation forecasts a \$1.1 billion loss of federal financial support for the program during State Fiscal Year 2012 due to a change in the federal formula for calculating the relative percent of state and federal financial contributions toward the program. The Medical Expense Deduction eligibility category was established as Arizona Laws 2001, Ch. 344, § 36 which added A.R.S. § 36-2901.04.

**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:**

None have been received yet.

**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:**

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 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
ADMINISTRATION

ARTICLE 14. AHCCCS MEDICAL COVERAGE FOR FAMILIES AND INDIVIDUALS

Section

R9-22-1442. Cessation of MED Coverage

ARTICLE 14. AHCCCS MEDICAL COVERAGE FOR FAMILIES AND INDIVIDUALS

**R9-22-1442. Cessation of MED Coverage**

The Department shall not approve any individual or family who has applied on or after May 1, 2011 as eligible for MED coverage. With respect to any applications that are pending as of May 1, 2011, the Department shall not approve any individual or family as eligible for MED coverage who has not met all eligibility requirements prior to May 1, 2011.