

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

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

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 2270.) The Governor's Office authorized the notices to proceed through the rulemaking process on June 19, 2013.

[R14-124]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable)**

Article 16	<u>Rulemaking Action:</u>
R9-22-1601	New Article
	New Section
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. §§ 36-2903, 36-2903.01
Implementing statute: A.R.S. §§ 36-2901
Federal authority: 42 USC 1396a(a)(47)(B); 42 CFR Part 435.1110
- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**

Notice of Rulemaking Docket Opening: 20 A.A.R. 2263, August 22, 2014 (*in this issue*).
- 4. The agency's contact person who can answer questions about the rulemaking:**

Name:	Mariaelena Ugarte
Address:	AHCCCS Office of Administrative Legal Services 701 E. Jefferson, Mail Drop 6200 Phoenix, AZ 85034
Telephone:	(602) 417-4693
Fax:	(602) 253-9115
E-mail:	AHCCCSRules@azahcccs.gov
Web site:	www.azahcccs.gov
- 5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

The Administration is promulgating rules to comply with the Affordable Care Act of 2010, which added 42 USC 1396a(a)(47)(B), and 42 CFR 435.1110 which requires the State Medicaid agency to allow qualifying hospitals the option to determine presumptive eligibility for Medicaid for certain individuals. This process is referred to as Hospital Presumptive Eligibility (HPE). These proposed rules are to be effective January 1, 2015.

To be a hospital qualified to make a presumptive eligibility determination, the hospital must agree to make the determination in accordance with policies and procedures established by AHCCCS. 42 CFR 435.1110(b)(1). The details of

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the terms and conditions for qualifying hospitals will be included in a written agreement between AHCCCS and the hospital, and the terms of such contracts are exempt from the requirements for rule-making. ARS 41-1005(a)(15).

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

A study was not referenced or relied upon when promulgating the regulations.

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

Not applicable.

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

It is extremely difficult to predict the impact of the proposed rule change. HPE is a new federal requirement as of January 1, 2014. It is unknown how many hospitals will be become qualified hospitals, how many individuals will apply for HPE through qualified hospitals, and how many individuals who are provided HPE will fail to file a full application or be determined ineligible following submission of a full application. However the agency is assuming a budget impact of \$5M in total fund payments for health care services provided to individuals who do not file a full application within the required timeframe or who are determined ineligible following submission of the full application. These payments will be made to health care providers including but not limited to hospitals.

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Mariaelena Ugarte
Address: AHCCCS
Office of Administrative Legal Services
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 253-9115
E-mail: AHCCCSRules@azahcccs.gov
Web site: www.azahcccs.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Proposed rule language will be available on the AHCCCS website www.azahcccs.gov the week of August 11, 2014. Please send written or email comments to the above address by the close of the comment period, 5:00 p.m., September 29, 2014.

Date: September 29, 2014

Time: 10:30 a.m.

Location: AHCCCS
701 E. Jefferson
Phoenix, AZ 85034

Nature: Public Hearing

Date: September 29, 2014

Time: 10:30 a.m.

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

Nature: Public Hearing

Date: September 29, 2014

Time: 10:30 a.m.

Location: 2717 N. 4th St., Suite 130

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Flagstaff, AZ 86004

Nature: Public Hearing

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

No other matters have been prescribed.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rule does not require a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

This rulemaking arises from a requirement of federal law, specifically 42 USC 1396a(a)(47)(B) and 42 CFR Part 435.1110 which require every State Medicaid program (including AHCCCS) to establish a Hospital Presumptive Eligibility process as a condition of receiving federal funding for the Medicaid program in the State. The rule is not more stringent than federal law.

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

No analysis was submitted.

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

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

**ARTICLE 16. SOCIAL SECURITY DISABILITY INSURANCE - TEMPORARY MEDICAL COVERAGE
HOSPITAL PRESUMPTIVE ELIGIBILITY**

Section

R9-22-1601. Expired HPE General Eligibility Requirements

**ARTICLE 16. SOCIAL SECURITY DISABILITY INSURANCE - TEMPORARY MEDICAL COVERAGE
HOSPITAL PRESUMPTIVE ELIGIBILITY**

R9-22-1601. Expired HPE General Eligibility Requirements

A. Notwithstanding Article 3, a qualified hospital may determine Hospital Presumptive Eligibility (HPE), on the basis of preliminary information, that an individual is eligible for AHCCCS medical coverage during the presumptive eligibility period described in this Article, if the individual is a United States citizen or eligible qualified alien, and the individual is:

- 1. Pregnant with gross household income that does not exceed 156% of the FPL;**
- 2. An adult who meets the requirements of R9-22-1427(E);**
- 3. A caretaker relative as defined in R9-22-1401(B) with gross household income that does not exceed 106% of the FPL;**
- 4. Under age 19 with gross household income that does not exceed the limit set in R9-22-1427(D) for the child's age;**
- 5. A woman screened for breast or cervical cancer by an Arizona program of the National Breast and Cervical Cancer Early Detection Program who meets the requirements of R9-22-2003(A); or**
- 6. A former foster care child who meets the requirements of R9-22-1432.the following eligibility requirements must be met when applying for.**

B. Definitions. In addition to definitions contained in R9-22-101 and A.R.S. § 36-2901, the words and phrases in this Article have the following meanings unless the context explicitly requires another meaning:

"Qualified hospital" means a hospital that has signed an agreement with the Administration to process HPE applications and has not been disqualified.

C. Application Process:

Arizona Administrative Register / Secretary of State
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1. Right to apply. A person may apply for presumptive eligibility for AHCCCS medical coverage by submitting an Administration-approved application to the qualified hospital.
 2. Application. To initiate the application process, the qualified hospital will accept an application from the applicant, an adult who is in the applicant's household, as defined in 42 CFR 435.603(f), or family, as defined in section 36B(d)(1) of the Internal Revenue Service (IRS) Code, an authorized representative, or if the applicant is a minor or incapacitated, someone acting responsibly for the applicant by submitting a written or online application under 42 CFR 435.907.
- D.** To establish presumptive eligibility, an applicant must complete and submit an AHCCCS-approved presumptive eligibility application signed under penalty of perjury to a qualified hospital. The applicant must attest to the name(s), relationship(s), and income of all persons in the household. In addition, the applicant must provide and attest to the following information regarding each household member on whose behalf AHCCCS medical coverage is sought:
1. The individual's date of birth;
 2. Whether the individual is pregnant;
 3. Whether the individual has been determined eligible for Breast and Cervical Cancer as described under Article 20;
 4. Whether the individual is a former foster child described under R9-22-1432;
 5. The U.S. citizenship status or eligible qualified alien status under A.R.S. 36-2903.03 of the individual;
 6. The individual's permanent and mailing addresses;
 7. The individual's Arizona residency status; and
 8. Whether the individual has Medicare coverage.
- E.** Presumptive eligibility begins on the date the hospital determines an individual presumptive eligibility and ends with the earlier of:
1. In the case of an individual on whose behalf an application has been submitted to AHCCCS or its designee under Article 3, the day on which AHCCCS or its designee makes a determination on that application; or
 2. In the case of an individual on whose behalf an application has not been submitted to AHCCCS or its designee under Article 3, on the last day of the following month in which the determination of presumptive eligibility was made by the qualified hospital.
- F.** An individual may not be determined presumptively eligible more often than once every two years.
- G.** Coverage and reimbursement of services.
1. The Administration shall provide coverage of medically necessary services described under Article 2 to persons determined eligible for HPE on a fee-for-service basis.
 2. Providers shall submit claims for services provided persons determined eligible for HPE to the Administration as described under Article 7.
- H.** A member may withdraw from HPE coverage by notifying the Administration or its designee.
- I.** Upon determining an individual presumptively eligible, the qualified hospital shall:
1. Notify the applicant at the time a determination regarding presumptive eligibility is made, in writing and orally if appropriate, of the determination for each individual on whose behalf presumptive eligibility was requested and the effective date of the presumptive eligibility;
 2. Provide the applicant with a regular AHCCCS-approved application form and inform the applicant that the applicant may file an application for Medicaid with the Administration or its designee;
 3. Notify AHCCCS of the presumptive eligibility determination;
 4. Notify the applicant at the time the determination is made that presumptive eligibility ends with the earlier of:
 - a. In the case of an individual on whose behalf an application has been submitted to AHCCCS or its designee under Article 3, the day on which AHCCCS or its designee makes a determination on that application; or
 - b. In the case of an individual on whose behalf an application has not been submitted to AHCCCS or its designee under Article 3, on the last day of the following month in which the determination of presumptive eligibility was made by the qualified hospital.
- J.** A determination by a qualified hospital that an individual is not presumptively eligible is not appealable under Article 34. If a qualified hospital denies an individual presumptive eligibility, the individual may apply for coverage by submitting an application to the Administration or its designee.