

## 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 Proposed Exempt Rulemaking was reviewed per Laws 2010, Ch. 287, § 18. (See the text of § 18 on page 1064.) The Governor's Office authorized the notice to proceed through the rulemaking process on April 28, 2011.*

[R11-43]

#### PREAMBLE

- 1. Sections Affected** **Rulemaking Action**  
R9-22-1443 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. § 36-2901.01; Arizona Laws 2010, 7th Special Session, Ch. 10, § 34; Arizona Laws 2011, 1st Special Session, Ch. 1, § 1(B); Arizona Laws 2011, 1st Regular Session, Ch. 31, § 34
- 3. The proposed effective date of the rules:**  
July 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. June 20, 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](mailto: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 legislative requirement that the Administration adopt rules regarding eligibility necessary to implement a program within available appropriations. Specifically, the Administration is proposing to establish through rule, 1) closing all new eligibility beginning July 1 for persons in AHCCCS Care not designated as eligible in the Arizona State Plan under Title XIX of the Social Security Act; and, 2) flexibility and a methodology for the Director to: delay closure of the AHCCCS Care program, re-open the AHCCCS Care program, or terminate coverage for some or all persons in the AHCCCS Care

Notices of Exempt Rulemaking

Program. These changes will be predicated on the most current information and estimates of available resources to support the Medicaid program. The proposed rule also sets forth the means by which changes in eligibility and their effective dates will be communicated to the public. Approval of this methodology by the Center for Medicare and Medicaid Services is required.

The proposed methodology will apply to persons in the "AHCCCS Care" population; that is, persons who are not designated as eligible in the Arizona State Plan for Medicaid under specific provisions of Title XIX of the Social Security Act. The State Plan is the agreement between the state and federal government that entitles the state to federal participation in the cost of providing medical care through AHCCCS. In general terms, the people affected by this rule have household income at or below 100% of the federal poverty level and are not pregnant, under age 18, a specified caretaker relative of a deprived child, age 65 or older, blind, or disabled. Operationally, AHCCCS refers to this waiver population as the "AHCCCS Care" eligibility expansion group. The federal government refers to this group (along with the MED eligibility group) as a "Waiver Population" or an "expansion population" (because they are not listed in the Arizona State Plan for Medicaid, but are listed in a separate agreement known as the Waiver or the Demonstration Project). Informally, and somewhat imprecisely, this group is also referred to as "childless adults."

Arizona Laws 2010, 7th Special Session, Ch. 10, § 34, provides that AHCCCS is exempt from the rulemaking requirements of Title 41, Chapter 6, Arizona Revised Statutes, for two years after the effective date of this act, for the following purpose of "establishing and maintaining rules regarding standards, methods and procedures for determining eligibility necessary to implement a program within the available appropriation." That Act also requires the agency to provide public notice and an opportunity for public comment on proposed rules at least 30 days before rules are adopted or amended. Subsequently, the Arizona Legislature reiterated its directive. Arizona Laws 2011, 1st Special Session, Ch. 1, § 1(B), provides that:

"... 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."

During its most recent session, the Arizona Legislature again directed AHCCCS to establish and maintain "rules regarding standards, methods and procedures for determining eligibility necessary to implement a program within the available appropriation." Arizona Laws 2011, 1st Regular Session, Ch. 31, § 34.

For the State Fiscal Year ending June 30, 2012, AHCCCS has projected that maintaining eligibility standards as they exist today would cost \$9,981,831,300 in total funds. Of those total funds, \$3,178,180,700 would be the nonfederal funds that the state and political subdivisions of the state would be required to contribute toward the cost of the program. The difference is provided through federal matching funds. The SFY12 budget recently signed into law appropriates \$2,636,350,700 in nonfederal funds (including funds in the Arizona Tobacco Litigation Settlement fund under A.R.S. § 36-2901.02). This is \$541,830,000 short of the amount of non-federal funds that are projected to be necessary to maintain the status quo with respect to eligibility.

There are three primary drivers of cost in the Arizona Health Care Cost Containment System: eligibility standards, the scope of covered healthcare services, and the rates of reimbursement to healthcare providers. During recent fiscal years, AHCCCS has already implemented significant changes to reduce costs in each of these areas and has pursued opportunities to increase program revenues. Nevertheless, there are legal and practical constraints on the ability of AHCCCS to continue to reduce costs with respect to eligibility standards, the scope of services, and reimbursement rates. As a condition of receiving federal financial support for the AHCCCS program, the state must comply with the requirements of the Medicaid Act, unless those requirements are waived by the Secretary of the United States Department of Health & Human Services ("the Secretary") under section 1115 of the Social Security Act, 42 U.S.C. 1315.

Regarding reimbursement to healthcare providers, section 1902(a)(30)(A) of the Medicaid Act, 42 U.S.C. 1396a(a)(30)(A), requires the state to provide assurances to the Secretary that the state has established:

"methods and procedures relating to ... the payment for ... care and services available under the plan ... as may be necessary ... to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

The United States Court of Appeals for the 9th Circuit has ruled that, in most cases, the reimbursement rates established by the state must bear a reasonable relationship to efficient and economical costs of providing quality services. *Indep. Living Ctr. of S. Cal., Inc. v. Maxwell-Jolly*, 572 F.3d 644, 652 (9th Cir. Cal. 2009). Therefore, the state cannot reduce provider reimbursement indefinitely and continue to attract a number of providers reasonably sufficient to assure access comparable to the general population. During recent fiscal years (including the current fiscal year) AHCCCS has implemented reductions in its capped fee-for-service provider rates, and the legislature has directed that inflationary adjustments otherwise required by statute be suspended. During the most recent session, the Legisla-

Notices of Exempt Rulemaking

ture reset inpatient hospital rates, continued the suspension of inflationary increases to rates, eliminated reimbursement for certain hospital claims with extraordinary costs per stay, and granted AHCCCS authority to reduce rates further. Within the constraints imposed on the program by law and by market forces, AHCCCS continues to explore methodologies that provide fair and reasonable reimbursement to health care providers consistent with the provision of efficient quality care while reducing costs to the system. Based on this analysis, the program is anticipating the implementation of additional rate reductions on October 1, 2011.

Regarding the scope of covered healthcare services, the Medicaid Act lists the categories of medical services that are eligible for federal matching dollars. 42 U.S.C. 1396d(a)(1) – (29). As a condition of participation in the Medicaid program, every state must cover certain services - such as hospital services and physician services - unless the requirement is waived by the Secretary. Other types of services - such as prescription drugs, dental services, and physical therapy - can, at the state's option, be covered by the state Medicaid program, and the cost of those services are eligible for federal matching funds. 42 U.S.C. 1396a(a)(10). In addition, the Medicaid Act permits states to place limits on the amount, duration, and scope of both mandatory and optional services, so long as the services are offered in an amount adequate to meet the intended purpose.” During recent fiscal years, AHCCCS has eliminated or limited the scope of services for adults with respect to the services of podiatrists, dental care, physical therapy, preventative care services, orthotics and medical supplies and equipment. AHCCCS is currently reviewing the impact and potential cost savings associated with limits on the number of hours of respite care that will be covered for persons in home and community based settings, and the number of inpatient hospital days and emergency department visits that will be covered per year. AHCCCS will also be requesting that CMS approve the elimination of Non-emergency transportation services for select populations in certain geographic locations.

Regarding eligibility standards, the Medicaid Act as amended by the Affordable Care Act, now codified as 42 U.S.C. 1396a(gg), mandates that the state must maintain the eligibility standards established by the state as of March 2010. This is referred to as the “maintenance of effort” requirement (MOE). However, by letter dated February 15, 2011 from the Secretary to the Governor of Arizona, the state was informed that it could, consistent with that federal requirement, eliminate eligibility for the categories covered not through the Arizona State Plan for Medicaid, but solely under the authority in the current Demonstration Project by not renewing its request to cover those expansion populations under a new Demonstration Project. By doing so, the Secretary stated, the state would not violate the MOE requirements of the Medicaid Act. In the same letter the Secretary expressed uncertainty about her legal ability to waive the MOE requirements for State Plan populations.

The 2000 Arizona Ballot Propositions included Proposition 204 which added section 36-2901.01 to the Arizona Revised Statutes. Specifically, the first subsection of that statute requires AHCCCS to cover all residents with income at or below the federal poverty level. To accomplish this objective the second subsection dedicated the funds received through the Arizona Tobacco Litigation Settlement fund plus “any other *available* sources including legislative appropriations and federal monies” (emphasis added). As stated in greater detail below, the funds in the Arizona Tobacco Litigation Settlement Fund and the Proposition 204 Protection Account of the Tobacco Products Tax Fund are inadequate to pay for the cost of covering everyone defined as an eligible person by A.R.S. § 36-2901.01. As stated above, the other funds appropriated by the Arizona legislature are inadequate to cover the cost of services to populations subject to the maintenance of effort requirements of 42 U.S.C. 1396a(gg) and the full cost of continuing services to everyone included in the expanded definition of eligible person in A.R.S. § 36-2901.01.

Immediately prior to the passage of Proposition 204, AHCCCS covered families with income below an amount that is equal to about 23% of the current federal poverty level. At that time, AHCCCS also covered Supplemental Security Income recipients (and similar cases) whose income was below the federal benefit rate. As a result, Proposition 204 required AHCCCS to add eligibility for (1) families between approximately 23% and 100% of the federal poverty level, (2) Supplemental Security Income recipients with income between the federal benefit rate and the federal poverty level, and (3) individuals eligible under the AHCCCS Care program. AHCCCS amended its agreement with the Secretary (known as “the State Plan” for Medicaid) to extend coverage to the first two expansion groups. As categories covered under the Medicaid State Plan, those first two categories are subject to the maintenance of effort requirements of 42 U.S.C. 1396a(gg). In accordance with the Secretary's letter of February 15, 2011, the third expansion category covered under Proposition 204 is not because it is a “Waiver Population.” Therefore, closing new eligibility beginning July 1 for persons in AHCCCS Care who are not otherwise eligible under the State Plan is consistent with federal authority.

For the State Fiscal Year ending June 30, 2012, the estimated non-federal contributions for the cost of providing coverage to the first two groups is \$234,704,700. The total funds in the Arizona Tobacco Litigation Settlement Fund and the Proposition 204 Protection Account of the Tobacco Products Tax Fund for that same period are forecast to be \$148,579,200. This represents a shortfall in the voter designated fund of \$86,125,500 for the anticipated cost of just the first two Proposition 204 eligibility groups listed above (both of which are subject to the federal maintenance of effort requirements discussed above). If allocated in this manner, no funds remain from the voter designated fund for purposes of providing the non-federal funds necessary to support the AHCCCS Care “Waiver Population.” For the State Fiscal Year beginning July 1, 2011, AHCCCS will use the other funds appropriated by the Legislature to cover: (1) the remainder of the costs associated with the first two Proposition 204 State Plan expansion categories listed above, (2) the costs associated with other eligibility groups listed in the State Plan that are subject to the MOE requirements unless those requirements are waived by the Secretary, and (3) to fund continuation of the AHCCCS Care program if it is closed to new enrollment.

Notices of Exempt Rulemaking

The state is electing not to seek authority under future Demonstration Projects for coverage of the AHCCCS Care population as described in the current Demonstration Project. Instead, AHCCCS is requesting waiver authority to claim federal financial participation for a non-entitlement program for persons not otherwise covered under the State Plan (non-disabled childless adults) at an income level that can be adjusted as necessary to maintain a program within state appropriations. In addition, certain persons in this new waiver expansion population would be required to pay an enrollment premium to discourage controllable behaviors adverse to health such as smoking and obesity.

Budgeting and financial planning for the AHCCCS program is a dynamic process. A budget is predicated on a serious of estimates such as projected enrollment, projected costs per enrollee and projected savings associated with cost containment strategies. While, absent further legislative action, the amount of available state funding is set in law, there are a number of other factors that affect the estimate of the availability of funds in support of the AHCCCS program. To state the obvious, AHCCCS cannot predict with absolute certainty, the number of persons who will apply and be determined eligible in the future. As mentioned above, AHCCCS has implemented, and plans to implement, changes to eligibility, to the scope of benefits, and to reimbursement rates to address the state's continuing fiscal shortfall. There is some uncertainty with respect to the cost savings associated with each of these and with the timing of those cost savings. For instance, the estimates of the cost savings associated with closing MED to new enrollment assumes that MED enrollment will decline at a fixed rate; however, there may be fewer or more persons who retain eligibility late into the phase out time-frame. Estimated savings associated with limitations in benefits are still being finalized. As a result of the Affordable Care Act, AHCCCS, beginning in the Spring of this year, is able to participate in the Medicaid Drug Rebate program. While AHCCCS expects to collect significant rebates from drug manufacturers as a result, the precise amount and the amount of the federal share of those rebates are unknown at this time. CMS also must approve components of the Governor's Medicaid Reform Plan and there may be elements of that Plan that do not receive federal government approval. In addition, while AHCCCS is confident that its plan of action is within its legal authority, it is anticipated that there will be litigation regarding aspects of the AHCCCS plan to reduce costs. Judicial intervention, in the form of preliminary or permanent injunctions, could impose additional constraints on the use of available funds and/or require AHCCCS to consider changes to other aspects of the program not subject to any such court order. As a result, this rulemaking establishes an expeditious and flexible approach to the management of eligibility as one of the primary drivers of cost with the goal of minimizing the number of persons losing coverage. While AHCCCS anticipates the need to close the AHCCCS Care program to new enrollment beginning July 1, it proposes through this rulemaking to provide flexibility to the Director to implement changes to the AHCCCS Care program based on the most current fiscal data. The AHCCCS Administration is committed to regular review of the program's financial status and prompt adjustment of eligibility standards to respond to budgetary changes. Through this rulemaking, AHCCCS proposes a means to operate the program within available funding while retaining health coverage for as many Arizonans as is reasonably possible.

Under the Special Terms and Conditions of the current Demonstration Project, if the state does not seek authority to continue coverage for the waiver expansion populations" (such as AHCCCS Care) 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 AHCCCS Administration or the Department of Economic Security (which also determines eligibility for AHCCCS Care) from making any new determinations of AHCCCS Care eligibility beginning July 1, 2011 except for redeterminations for persons who were determined eligible prior to that date and have remained continuously eligible. With respect to applications that are pending as of that date, the AHCCCS Administration and the Department will complete the eligibility determination process, but will only approve AHCCCS Care eligibility for persons that meet all eligibility criteria before July 1, 2011.

**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

**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 AHCCCS Care population. There are currently about 221,000 members in the AHCCCS Care program. Due to turnover or movement on and off the program (sometimes referred to as "churn"), AHCCCS estimates that, because of this turnover, closing new enrollment for this program will result in a decrease in the AHCCCS Care population of about 50% one year after closing eligibility. Absent a change in circumstances, these persons would not be eligible under any other category of AHCCCS eligibility. This action is expected to save the State General Fund approximately \$190 million over a 12 month period.

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

Not applicable

Notices of Exempt Rulemaking

**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

R9-22-1443. Closing New Eligibility for Persons Not Covered under the State Plan

ARTICLE 14. AHCCCS MEDICAL COVERAGE FOR FAMILIES AND INDIVIDUALS

**R9-22-1443. Closing New Eligibility for Persons Not Covered under the State Plan**

- A.** Subject to subsection (B) and approval by the Center for Medicare and Medicaid Services, neither the Department nor the Administration shall approve as eligible for coverage individuals who apply on or after July 1, 2011 who do not otherwise meet the eligibility criteria for an optional or mandatory Title XIX coverage group described in the Arizona State Plan for Medicaid: that is, neither the Department nor the Administration shall approve eligibility with effective dates on or after July 1, 2011 for the population described in A.R.S. § 36-2901.01 and R9-22-1428(4), referred to in this rule as "AHCCCS Care."
1. With respect to any applications that are pending as of July 1, 2011, the Department shall not approve any individual as eligible for AHCCCS Care who has not met all eligibility requirements prior to July 1, 2011.
  2. This rule does not prohibit the redetermination of an individual as eligible for AHCCCS Care on or after July 1, 2011, if the individual was determined eligible for AHCCCS Care prior to July 1, 2011 and has remained continuously eligible since the date of the determination of eligibility that occurred prior to July 1, 2011.
- B.** At least monthly, the Director shall review the most recent estimate of the anticipated expenditures for the remainder of the state fiscal year as compared to funds remaining in the appropriations made to the agency for the state fiscal year as well as any other known or reasonably anticipated sources of other funding. Based on that review, the Director may:
1. Delay implementation of the closure of new enrollment into the AHCCCS Care program.
  2. Re-open the AHCCCS Care program to new enrollment following the closure of the AHCCCS Care program.
  3. Terminate coverage for some or all persons eligible for the AHCCCS Care program based on date of eligibility and/or such other factors that the Director determines are equitable and consistent with the objective of ensuring coverage for as many persons as possible within available funding.
- C.** Public notice of any changes to the AHCCCS Care program shall be provided 30 days prior to the effective date of the change via publication on the AHCCCS web site unless shorter notice is necessary to maintain a program that is reasonably anticipated to remain within available funding.

NOTICE OF 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 1064.) The Governor's Office authorized the notice to proceed through the rulemaking process on February 28, 2011. [R11-44]

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 effective date of the rules:**  
May 1, 2011
- 4. A list of all previous notices appearing in the Register addressing the exempt rule:**  
Notice of Proposed Exempt Rulemaking: 17 A.A.R. 426, March 25, 2011
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
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 the 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 up to 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.  
Arizona Laws 2010, 7th Special Session, Ch. 10, § 34, reads:  
"The Arizona health care cost containment system is exempt from the rulemaking 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."

Notices of Exempt Rulemaking

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 dollar 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 either relied on or 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:**

None

**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

**Notices of Exempt Rulemaking**

through the end of the current fiscal year, June 30, 2011. That same Executive Budget Recommendation forecasts a \$1.1 billion dollar 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):**

No significant changes were made between the proposed rule and the final rule language, the Administration made the rules more clear, concise, and understandable by making grammatical, verb tense, punctuation, and structural changes throughout the rules.

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

**MED Freeze 2011  
Public Comments**

The Arizona legislature has directed the AHCCCS Administration to establish a program within legislative appropriation. Due to the state's severe budget crisis, the legislature has not appropriated sufficient funds to maintain the AHCCCS program at current eligibility levels. Reducing eligibility standards involves difficult decisions which the Administration realizes will have significant impacts on the lives of some Arizona residents.

We are implementing these changes with the goal of preserving coverage to the greatest extent possible. AHCCCS will continue to cover all people who are under age 18, pregnant, parents of deprived children, age 65 or older, or blind or disabled and whose income does not exceed 100% of the FPL. In addition, there are certain categories of children and pregnant women with income up to 150% of the FPL who are covered.

Keeping in mind that MED eligibility is limited to a maximum of six months; the Phase Out of the MED program does not mean that we will be eliminating coverage for anyone before the normal expiration of their period of MED eligibility. All persons who are currently enrolled in the MED program (or who are made eligible based on meeting MED eligibility requirements before May 1, 2011) will be eligible through the end of their certification period.

The AHCCCS Administration and ADES are, and will be, soliciting additional or updated information from people before the end of their MED certification period to determine whether they qualify for any other AHCCCS program. The details of the MED Phase Out Plan are available on our web site at: <http://www.azahcccs.gov/reporting/federal/waiver.aspx#med>.

| <b>#:</b> | <b><u>Date/<br/>Commenter:</u></b> | <b><u>Comment:</u></b>   | <b><u>Response:</u></b>  |
|-----------|------------------------------------|--|--|
| 1.        | 03/20/11<br>Dagon<br>Productions   | <i>You penalize children's benefits which are absolutely necessary.</i>  | This rule relates to the phase out and ultimate elimination of the MED program. The Med program is for persons who are not AHCCCS eligible under any other category, whose income exceeds 100% of the FPL and who have incurred financial liability for medical expenses in an amount which, when deducted from their income, is less than 40% of the Federal Poverty Level. Eligibility is limited to no more than six months. The elimination of this program is necessary for the Administration to comply with legislative direction to establish an AHCCCS program within legislative appropriation.<br><br>As part of the MED Phase Out plan, all MED members who are currently eligible will retain their current coverage until their eligibility expires. All MED members, including children, are being re-evaluated for coverage in other programs. |
| 2.        | 03/20/11<br>Shultz4U               | <i>What about those needing life saving medications they cannot buy, what about them? They will end up in our hospitals and emergency rooms.</i> | The elimination of this program is necessary for the Administration to comply with legislative direction to establish an AHCCCS program within legislative appropriation.  |



*Arizona Administrative Register / Secretary of State*

**Notices of Exempt Rulemaking**

| <b>#:</b> | <b>Date/<br/>Commenter:</b> | <b>Comment:</b>  | <b>Response:</b>  |
|-----------|-----------------------------|--|---|
| 3.        | 03/20/11<br>Mudman          | <i>1. Objection to the elimination of "spend down". These individuals are devastated by catastrophic illness, have no insurance, and probably will never recover financially.<br/>2. If this measure was voted in by the public, it should not be eliminated by politics.</i>  | The MED program under A.R.S. § 36-2901.04 was not established by voter initiative.  |
| 4.        | 03/20/11<br>Dustin Johnson  | <i>Demands that you keep in place what I voted for in back in 2000!</i>  | The MED program under A.R.S. § 36-2901.04 was not established by voter initiative.  |
| 5.        | 03/20/11<br>Ken Jacobsen    | <i>It is very clear that they (legislature) would rather give tax cuts to the wealthy and corporations than to provide healthcare to the Arizonans who need it.</i>  | The AHCCCS Administration does not have the authority to impose taxes or modify the tax code. The elimination of this program is necessary for the Administration to comply with legislative direction to establish an AHCCCS program within legislative appropriation.   |
| 6.        | 03/21/11<br>Jan Haus        | <i>DO NOT CUT THE PEOPLE FROM AHCCCS. There are so many other ways to cut the budget.</i>  | The elimination of this program is necessary for the Administration to comply with legislative direction to establish an AHCCCS program within legislative appropriation.   |
| 7.        | 03/21/11<br>Janell Pierce   | <i>I oppose this pending change and I also oppose the decision to cut service to those needing transplants.</i>  | The elimination of this program is necessary for the Administration to comply with legislative direction to establish an AHCCCS program within legislative appropriation.<br><br>The Administration has reinstated coverage for transplants in accordance with recent legislation.  |
| 8.        | 03/21/11<br>Deborah Davis   | <i>My mother has a carcinoid tumor that requires an incredibly expensive treatment that she will be on for the rest of her life. She's 67 years old and her life has been mostly a good one. I don't want her to die, and I cannot afford the treatments to keep her alive. Help me convince Governor Brewer not to do this.</i>                                   | Individuals age 65 and older could qualify for a program for persons who are aged, blind or disabled and who have income below 100% of the FPL. In addition, persons at immediate risk of institutionalization (for instance in a nursing home) with income below 300% of the Federal Benefit Rate may be eligible under a different category. (ALTCS)  |
| 9.        | 03/21/11<br>Cynthia Vlosic  | <i>Childless adults will be dropped from the AHCCCS program in October. What were the criteria used in making this decision? Do childless adults suffer from more diseases? Do they incur higher costs for AHCCCS?</i>   | This rule does not relate to eligibility for childless adults.  |
| 10.       | 03/22/11<br>Barb Clark      | <i>My 47-year-old daughter, Debbie Clark, has been mentally and physically ill for most of her adult life. Cutting out the AHCCCS program will be like kicking her and thousands of other ill and needy people into an early grave.<br/><br/>What about doing some research to find out who really needs the AHCCCS program rather than just dumping everyone.</i> | Disabled individuals could qualify for a program for the aged, blind and disabled if they have income below 100% of the FPL. In addition, persons at immediate risk of institutionalization (for instance, persons residing in a nursing home) with income below 300% of the Federal Benefit Rate may be eligible under a different category. (ALTCS).<br><br>Federal law requires the state to establish uniform standards for eligibility, including income, within categories established in federal law. With the exception of person with disabilities and persons at immediate risk of institutionalization, federal law does not permit the state to make individualized eligibility determinations based on medical need. |

*Arizona Administrative Register / Secretary of State*

**Notices of Exempt Rulemaking**

| <b>#:</b> | <b>Date/<br/>Commenter:</b>                           | <b>Comment:</b>   | <b>Response:</b>   |
|-----------|---|---|--|
| 11.       | 03/23/11<br>Vincent Moloney                           | <i>What happens to those children after you take away their health insurance?</i>   | As part of the MED Phase Out plan, all MED members who are currently eligible will retain their current coverage until their eligibility expires. All MED members, including children, are being re-evaluated for coverage in other programs.  |
| 12.       | 03/27/11<br>Chris Miller                              | <i>For people who earn too much and for Childless adults, just leave a co-pay that they have to pay if they visit a doctor/specialist/hospital, etc.<br/>If you drop them, then they will just show up at the emergency rooms AND what have we saved????</i>  | Persons within the MED categories currently have copayment responsibilities. The ability of the Administration to increase the amount of those copayments is limited by federal law. Within those limitations it is not possible to establish a copayment schedule that would offset the cost of the MED program.  |
| 13.       | 04/02/11<br>ziggy                                     | <i>Considering charging patients \$50 a year if they smoke, have diabetes or are overweight.<br/>I am a type 1 diabetic, am not a fat and lazy person. I did NOT bring diabetes on myself, I was BORN with it.</i>  | This rule relates to the Phase Out and elimination of the MED program- not to copayments or premiums. In addition, we agree with you and do not intend to assess a fee simply because someone is diabetic. The proposal regarding annual fees is intended to relate to managing conduct and conditions that are within the individual's control.   |
| 14.       | 04/05/11<br>Matt Jewett<br>Children's Action Alliance | <i>Opposition to the rule affecting R9-22-1442, which would eliminate the Medical Expense Deduction or "spend down" category for AHCCCS.<br/>Eliminating the spend down category would throw 700 children, most with expensive medical conditions, off of their health insurance. Eliminating spend down saves little money in Arizona's budget, while sending tax money we pay to other states.</i>                        | As explained above, no one currently enrolled in MED will lose coverage.<br>As part of the MED Phase Out plan, all MED members who are currently eligible will retain their current coverage until their eligibility expires. All MED members, including children, are being re-evaluated for coverage in other programs.  |
| 15.       | 04/07/11<br>Joan Sacramento                           | <i>These changes will impact many vulnerable adults who have no money and little ability to get health care.<br/>Again, the result is that many hospitals that serve the poor may not be able to stay open and more jobs will be lost.</i>  | We agree that these are difficult decisions, but the goal is to preserve coverage for individuals with no income or income below the federal poverty level. MED individuals are persons with income above the federal poverty level.   |
| 16.       | 04/08/11<br>Janice Ertl<br>St. Vincent De Paul        | <i>At St. Vincent de Paul Clinic, we provide charity medical care for the uninsured working poor ... Charities can only do so much.<br/>Getting on AHCCCS through the spend down is their only hope of receiving advanced medical treatment.</i>  | We understand the limits of charity care, but by law the agency is required to establish and operate the program within the limits of state appropriations.<br>The goal is to preserve coverage for individuals with no income or income below the federal poverty level. MED individuals are persons with income above the federal poverty level.   |
| 17.       | 04/08/11<br>Jessica Aguirre                           | <i>I think that AHCCCS should start doing monthly charges to all AHCCCS members. It would get money and it wouldn't be so much cuts on important things.<br/>There are concerns with persons who have appointments and come in with luxuries, such as name brand handbags and IPADs.<br/>With all these cuts its sad that most health care places will lose pts and more ppl will lose job. And I might be one of them.</i> | Persons within the MED categories currently have copayment responsibilities. The ability of the Administration to increase the amount of those copayments is limited by federal law. Within those limitations it is not possible to establish a copayment schedule that would offset the cost of the MED program.<br>If you suspect fraud within the AHCCCS program, please report it by calling 1-888-ITSNOTOK. |

*Arizona Administrative Register / Secretary of State*

**Notices of Exempt Rulemaking**

| <b>#:</b> | <b>Date/<br/>Commenter:</b>   | <b>Comment:</b>  | <b>Response:</b>  |
|-----------|---|--|---|
| 18.       | 04/09/11<br>Gabrielle Burhans<br>National Alliance on Mental Illness (NAMI) | <i>By requesting a waiver from your office our Governor and Legislature are effectively repealing Proposition 204 and this violates the voter's mandate.<br/>Insist that Arizona provide individuals with the health care coverage they need and have paid for with their tax dollars.</i>   | It appears the commenter may be referring to an old Waiver request. Please see the current Waiver request of March 31, 2011, see: <a href="http://www.azahcccs.gov/reporting/federal/waiver.aspx">http://www.azahcccs.gov/reporting/federal/waiver.aspx</a> .<br>AHCCCS is working diligently with CMS to ensure that no SMI individuals who meet the federal definition of disability lose coverage through this transition.<br>The MED program is not voter protected because A.R.S. § 36-2901.04 was not enacted through voter initiative. Because the current waiver is expiring, it is not subject to the Maintenance of Effort requirements in the federal Affordable Care Act.   |
| 19.       | 04/09/11<br>Dr. Allan Peters  | <i>As of now there will not be a public comment period on this proposal. It is very important that CMS hear from advocates and community groups who work with low income Arizonans that these requests are not needed, are harmful and have no place in a demonstration project that is intended to test out novel ideas and expand coverage—not reduce coverage and make it harder for persons to get medical services. Also please remember that persons up to 100% of the federal poverty level receive AHCCCS because of Proposition 204, a voter initiative approved by voters in 2000.<br/>I object to these radical changes that will impact disabled and poor individuals and would like for CMS to prevent these changes from becoming law.</i> | AHCCCS has established means for public input on its Demonstration Project request (the Waiver), the Phase Out plans for certain eligibility groups under the Demonstration Project that is expiring, and the State Administrative Rules intended to implement those plans. Details can be found on the Agency's web site at: <a href="http://www.azahcccs.gov/reporting/state/comments.aspx">http://www.azahcccs.gov/reporting/state/comments.aspx</a><br>The MED program is not voter protected because A.R.S. § 36-2901.04 was not enacted through voter initiative. Because the current waiver is expiring, it is not subject to the Maintenance of Effort requirements in the federal Affordable Care Act.<br>In addition, persons meeting the federal definition of disabled with income under the federal poverty level can retain coverage. |
| 20.       | 04/11/11<br>Cynthia Furrh<br>Community Assistance Center in Apache county   | <i>You are putting the people of rural Arizona in great and serious danger.<br/>Services are difficult to access now. If these cuts go through there will be no services available.<br/>Apache County is the poorest county in the state. The towns are 30 miles or more in distance.<br/>This proposal will eliminate the ability for our Seriously Mentally Ill to receive services, obtain medication, or participate in therapy.<br/>When these changes were proposed did anyone think of the hardship that the rural communities would suffer?<br/>The truth is that the rural communities are going to suffer for lack of population.</i>  | AHCCCS is working diligently with CMS to ensure that no SMI individuals who meet the federal definition of disability lose coverage through this transition.  |
| 21.       | 04/12/11<br>Carl Morris-Jackson   | <i>Are we under the premise that canceling the program will also cancel out the deficit of care needed for people needing medical care?<br/>We need to do what is necessary to make sure that our people in need are provided for.</i>   | As part of the MED Phase Out plan, all MED members who are currently eligible will retain their current coverage until their eligibility expires. All MED members, including children, are being re-evaluated for coverage in other programs.<br>The goal is to preserve coverage for individuals with no income or income below the federal poverty level. MED individuals are persons with income above the federal poverty level.  |

*Arizona Administrative Register / Secretary of State*

**Notices of Exempt Rulemaking**

| <b>#:</b> | <b>Date/<br/>Commenter:</b>                       | <b>Comment:</b>   | <b>Response:</b>   |
|-----------|---|---|--|
| 22.       | 04/13/11<br>Deb Holland<br>Fresenius Medical Care | <i>On behalf of the AZ citizens with ESRD we request that this important program be maintained for those who may be above the income guidelines for the AHCCCS program but who have a condition, such as ESRD, that require ongoing life-sustaining care.</i>   | Many people with ESRD with income under the federal poverty level will qualify for continued coverage under eligibility categories other than MED for person who meets the federal definition of disabled.<br><br>As part of the MED Phase Out plan, all MED members who are currently eligible will retain their current coverage until their eligibility expires. All MED members are being re-evaluated for coverage in other programs. |
| 23.       | 04/13/11<br>Kathy Herzog                          | <i>Do not deprive the indigent people of Arizona of life saving health care by no longer allowing them to enroll in the AHCCCS program.</i>   | As part of the MED Phase Out plan, all MED members who are currently eligible will retain their current coverage until their eligibility expires. All MED members including children are being re-evaluated for coverage in other programs.<br><br>The goal is to preserve coverage for persons who are below the federal poverty level.<br><br>We encourage you to contact your legislator directly.                                      |
| 24.       | 03/23/11 (mailed comment)<br>Judy Goehring        | <i>This program has kept my son alive for the past eight years, without it he would have died. It is not just the transplant patients that are life and death, some of the spenddown patients are life and death and will die without this program. I pray that the state of AZ will reconsider dropping the funding for this AHCCCS program as it is very desperately needed by these catastrophically ill patients.</i> | Many people are qualified for AHCCCS as a result of their disability.<br><br>As part of the MED Phase Out plan, all MED members who are currently eligible will retain their current coverage until their eligibility expires. All MED members, including children, are being re-evaluated for coverage in other programs.   |
| 25.       | 04/14/11<br>Maria Nieto                           | <i>Please DO NOT eliminate Arizona Health Care Cost Containment System (AHCCCS), my daughter developed diabetes shortly after she graduated from high school. She has not other medical insurance and she desperately needs this to survive.</i>  | The AHCCCS program is not being eliminated; the proposed rule is in reference to the MED program. If you have any questions in regards to the program you are in, please contact your eligibility worker.  |
| 26.       | 04/14/11<br>Andrea McCammon                       | <i>The proposed cuts to AHCCCS will hurt the most vulnerable of our Arizona population; i.e. the physically disabled, the mentally ill, children, and those economically depressed with life threatening diseases like cancer and diabetes.</i>   | The disabled, including persons with SMI that meet the federal definition of disability, and children are categorically eligible for Medicaid when their income is under 100% of federal poverty level and in some instances under 140%.   |
| 27.       | 04/18/11<br>AZHHA                                 | <i>AzHHA opposes the phase-out and ultimate elimination of the MED program.<br/><br/>"These individuals do not have any other health insurance."</i>  | While this may be true of many persons enrolled through the MED program, lack of other health insurance is not an eligibility requirement for the MED program or for most other AHCCCS programs.   |

**Notices of Exempt Rulemaking**

| #: | <u>Date/<br/>Commenter:</u>      | <u>Comment:</u>  | <u>Response:</u>   |
|----|----------------------------------|--|--|
|    | 04/18/11<br>AZHHA<br>(continued) | <p><i>“Elimination of this program will put added and unnecessary financial stress on many patients whose primary focus should be on their recovery.”</i></p> <p><i>“Elimination of this program will also financial strain hospitals and caregivers....[The elimination of the MED program] will translate directly into uncompensated care, because the hospitals must care for these patients anyway.”</i></p> <p><i>“AzHHA has joined a coalition ... to propose a set of healthcare assessments ... we urge the administration to modify the proposed rule [to include a proviso that MED eligibility will reopen] if the legislature appropriates dedicated revenues....”</i></p> <p><i>“Alternatively, we urge the administration to repeal the rule on and after June 30, 2012.”</i></p> | <p>The Arizona legislature has directed the AHCCCS Administration to establish a program within legislative appropriation. Due to the state’s severe budget crisis, the legislature has not appropriated sufficient funds to maintain the AHCCCS program at current eligibility levels. Reducing eligibility standards involves difficult decisions which the Administration realizes will have significant impacts on the lives of some Arizona residents. The Phase Out and eventual elimination of the MED program is one of several steps the Administration must take to establish a program within appropriated funds. Absent a waiver from the Secretary of the U.S. Department of Health &amp; Human Service, AHCCCS, as the state’s Medicaid program, is required as a matter of federal law to maintain eligibility standards relating to most pregnant women, children, certain caretakers of children, the elderly, and persons who are blind or disabled. While it is unfortunate that the state can no longer afford to provide health care coverage to persons in the MED program, the agency’s goal is to preserve coverage for individuals with no income or income below the federal poverty level particularly those in federally mandated categories such as children, the elderly and the blind and disabled.</p> <p>AHCCCS realizes this action will reduce the level of AHCCCS reimbursement to healthcare providers; however, the legislature has directed the AHCCCS Administration to establish a program within legislative appropriation. Due to the state’s severe budget crisis, the legislature has not appropriated sufficient funds to maintain the AHCCCS program at current eligibility levels.</p> <p>The agency will evaluate amending the proposed rule closing the MED program to new enrollment, if and when additional appropriations are dedicated to the program.</p> <p>The agency will evaluate amending the proposed rule closing the MED program to new enrollment, if and when additional appropriations are dedicated to the program.</p> |

**Notices of Exempt Rulemaking**

| #:  | <u>Date/ Commenter:</u>                       | <u>Comment:</u>  | <u>Response:</u>   |
|-----|---|--|--|
| 28. | 04/18/11<br>Ellen Katz<br>Morris<br>Institute | <p><i>The Institute objects to AHCCCS' proposed rule-making because AHCCCS failed to meet the deadline for such a phase out;</i></p> <p><i>failed to seek public input prior to the proposed rulemaking;</i></p> <p><i>did not affirmatively state it will continue benefits pending eligibility appeals when requested;</i></p> | <p>State law does not require a phase out plan prior to the phase out and elimination of the MED program. State law does require a 30 day notice and comment period prior to final rulemaking. AHCCCS is in compliance with that requirement by virtue of this solicitation of comments on its proposed rule. The federal government has agreed to provide AHCCCS federal financial support for the MED program pursuant to the authority of the Secretary of the U.S. Department of Health &amp; Human Services under 42 U.S.C. 1315. As a condition of that federal financial support, AHCCCS must administer the program in accordance with the "Special Terms &amp; Conditions" of the demonstration project approved by the Secretary. Those Special Terms &amp; Conditions allow for a phase out period of less than six months with CMS approval of the phase out plan. The proposed rule will be modified to reflect that implementation of the rule is subject to CMS approval if that approval is not obtained prior to the filing of the final rule.</p> <p>Consistent with Arizona Laws 2010, 7th Special Session, Ch. 10, § 34, AHCCCS provided public notice of this 30 day comment period prior to promulgating any final rules. Public hearings are not required by the state law. Section 1115 of the Social Security Act requires public input consistent with regulations promulgated by the Secretary on "an application or renewal of any experimental, pilot, or demonstration project. 42 U.S.C. 1315(d). The proposed federal regulations (which have not been finalized and are not in effect) apply to an application for or the extension of demonstration projects (proposed 42 CFR 431.408, 75 Fed. Reg. 56946). The phase out of MED is being conducted consistent with the established Terms &amp; Conditions of the demonstration project approved in October 2006. The MED phase out does not represent an application for or renewal of a demonstration project. CMS has not, either in the Special Terms &amp; Conditions to the existing waiver, or in any other directive to AHCCCS required public input prior to the initiation of proposing state administrative rules to phase out the MED program.</p> |

**Notices of Exempt Rulemaking**

| <b>#:</b> | <b>Date/<br/>Commenter:</b>  | <b>Comment:</b>   | <b>Response:</b>   |
|-----------|--|---|--|
|           | 04/18/11<br>Ellen Katz<br>Morris<br>Institute<br>(continued)   | <i>and intends to use an inadequate notice for the phase out process.</i>   | Beneficiaries' entitlement to continued benefits pending an eligibility appeal are set forth in <i>Arizona Administrative Code</i> , R9-34-114. Those rules are consistent with federal requirements in 42 CFR 431, Subpart E. This proposed rulemaking does not alter or amend existing state rules regarding notice of adverse actions. The phase out plan does include continued eligibility pending an appeal.<br><br>The requirements regarding notices of adverse actions by the agency are set forth in <i>Arizona Administrative Code</i> R9-22-1413 and 1415. Those rules are consistent with federal requirements in 42 CFR 431, Subpart E. This proposed rulemaking does not alter or amend existing state rules regarding continued benefits.<br><br>We are using all the notices that are in place today as well as issuing a new notice notifying MED families about the phase-out plan which solicits additional information regarding changes in their household. All notices have been provided to CMS for their review and are available on the AHCCCS web site. |
| 29.       | 04/18/11<br>Carol Finney   | <i>Perhaps its time to de-construct the way the mental health system is organized, i.e. funding of services based upon pathological differences and diagnoses.</i>  | This rule does not impact persons whose income is at 100% or below the federal poverty level.  |
| 30.       | 04/18/11<br>Susan Price<br>AZ Kidney<br>Disease and<br>Hypertension<br>Center<br>(mailed<br>comment) | <i>The elimination of the Medically Needy Program may be a short-term fix from a state budget perspective, but long term the effects will be overwhelmingly disastrous. On behalf of the 10,200 citizens in Arizona with chronic end stage kidney disease, we urge you to continue this important Medically Needy Program which serves patients that are above the annual income annual guidelines for the AHCCCS program (which is less than \$11,000 per family per year), but who have a severe long term chronic illness that requires on-going life-sustaining medical care.</i> | The MED program is statutorily limited to no more than six month blocks of eligibility. This means that at least every six months persons with income over 100% of FPL must incur personal debt for their medical expenses in order to qualify. As such, the MED program was not designed to meet the needs of people with severe chronic illness.<br><br>Many patients with ESRD are eligible for coverage through Medicare.  |

**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 adopted as an emergency rule?**

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.