

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 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 1125.) The Governor's Office authorized the notice to proceed through the rulemaking process on April 4, 2011.

[R11-50]

PREAMBLE

- 1. Sections Affected**
R9-22-206
- Rulemaking Action**
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. §§ 36-2903, 36-2907
Implementing statute: A.R.S. § 36-2907; Laws 2011, Ch. 31, §§ 34 and 38 (Senate Bill 1619) as signed into law by the Governor on April 6, 2011
- 3. The effective date of the rules:**
April 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. 699, April 29, 2011
Notice of Proposed Exempt Rulemaking: 17 A.A.R. 732, May 6, 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
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- 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 reinstate coverage for certain transplant services that were covered prior to an amendment to Arizona Revised Statutes § 36-2907(B)(2)(f) that excluded certain transplant services. Arizona Laws 2010, 7th Special Session, Ch. 10 ("the 2010 Act"). Specifically, the Administration is proposing to amend R9-22-206, Organ and Tissue Transplant Services, to explicitly include coverage for lung transplants, allogeneic unrelated Hematopoietic Cell transplants, heart transplants for the treatment of non-ischemic cardiomyopathy, transplants of a pancreas following a kidney transplant, and liver transplants for persons with hepatitis C. With this rulemaking, AHCCCS will continue to exclude coverage of pancreas transplants other than when performed simultaneously with or following a kidney transplant. This exclusion from coverage includes, and will continue to include, the exclusion of islet cell transplants and partial pancreas transplants. Arizona State 50th Legislature, 1st Regular Session, Laws 2011, Ch. 31, § 38(B) (Senate Bill 1619) as signed into law by the Governor on April 6, 2011 ("the

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2011 Act”) calls for coverage of services eliminated by the 2010 Act. While the 2010 Act states that pancreas only transplants and pancreas after kidney transplants are excluded, partial pancreas and islet cell transplants have been excluded prior to the 2010 Act as a matter of long-standing agency policy. The AHCCCS Administration has the authority under Arizona Revised Statute § 36-2907(D) to limit the scope of services by rule. The AHCCCS Administration relies on this authority rather than the 2010 Act to continue to exclude partial pancreas and islet cell transplants.

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 AHCCCS Administration had previously estimated that the transplant services that were excluded by the 2010 Act would affect one to 10 eligible persons per year at an approximate cost of \$100,000.00 per transplant. Reinstatement of the transplant services is estimated to have a corresponding effect.

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

No significant changes have been made between the proposed rule and the final rules.

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

No comments were received as of the close of the comment period of May 6, 2011.

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 2. SCOPE OF SERVICES

Section

R9-22-206. Organ and Tissue Transplant Services

ARTICLE 2. SCOPE OF SERVICES

R9-22-206. Organ and Tissue Transplant Services

A. Organ and tissue transplant services are covered for a member if prior authorized and coordinated with the member’s contractor, or the Administration. ~~The~~ Only the following transplants are covered for individuals 21 years of age or older:

1. Heart, including transplants for the treatment of non-ischemic cardiomyopathy;
2. Liver, including transplants for patients with hepatitis C;
3. Kidney (cadaveric and live donor);
4. Simultaneous Pancreas/Kidney (SPK);
5. Autologous and Allogeneic related and unrelated Hematopoietic Cell transplants;
6. Cornea; ~~and~~
7. Bone; ~~;~~
8. Lung; and
9. Pancreas after a kidney transplant (PAK).

B. The following transplants are not covered for members 21 years of age or older:

1. Heart transplants for non-ischemic cardiomyopathy;
2. Liver transplants for members with a diagnosis of Hepatitis C;

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- ~~3-1.~~ Pancreas only transplants if it is not performed simultaneously with or following a kidney transplant. Partial pancreas transplants and autologous and allogeneic pancreas islet cell transplants are not covered even if performed simultaneously with or following a kidney transplant,
- 4. ~~Pancreas transplants after a kidney transplant;~~
- 5. ~~Lung transplants;~~
- 6. ~~Allogeneic unrelated Hematopoietic Cell transplants;~~
- ~~7-2.~~ Intestine transplants, and
- ~~8-3.~~ Any other type of transplant not specifically listed in subsection (A).
- C. When there is a transplant of multiple organs, reimbursement will only be made for those covered.
- D. Organ and tissue transplant services are not covered for qualified aliens or noncitizens members of FESP under A.R.S. § 36-2903.03(D).