

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

*Editor's Note: The following Notice of Exempt Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1157.) The Governor's Office authorized the notice to proceed through the rulemaking process on March 1, 2012.*

[R12-74]

#### PREAMBLE

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

Article 4	New Article
R9-31-401	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. §§ 36-2982, 36-2985, and 36-2995  
Implementing statute: Arizona Laws 2011, Ch. 31, § 34
- 3. The effective date of the rule and the agency's reason it selected the effective date:**

May 1, 2012
- 4. A list of all notices published in the Register as specified in R1-1-409(A) that pertain to the record of the exempt rulemaking:**

Notice of Proposed Exempt Rulemaking: 18 A.A.R. 896, April 13, 2012
- 5. The agency's contact person who can answer questions about the rulemaking:**

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Web site:	www.azahcccs.gov
- 6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:**

If the federal government approves an amendment to Arizona's Medicaid Demonstration Project under section 1115 of the Social Security Act, and if certain political subdivisions of the state agree to transfer supporting funds to the state, the AHCCCS Administration intends to reopen enrollment to the KidsCare program on a limited basis as described in the amendment to the Demonstration Project.

Pursuant to A.R.S. § 36-2985, on December 21, 2009, the AHCCCS Administration stopped processing applications for KidsCare due to the insufficiency of funding. Under Arizona Laws 2011, Ch. 234, § 2, AHCCCS has the authority to accept funding from a political subdivision of this state to provide health care coverage to persons who would have been eligible pursuant to section 36-2901.01, Arizona Revised Statutes, if additional general fund monies were otherwise available (in general, persons in the MED and/or AHCCCS Care populations effected by A.A.C. R9-22-1435 and R9-22-1428). AHCCCS was approached by certain political subdivisions that have expressed an interest in providing funding based on that authority, and AHCCCS submitted a proposal to the United States Department of Health

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and Human Services Centers for Medicare and Medicaid Services (CMS), to seek federal matching funds through the Medicaid program for supplemental payments to designated safety net health care providers that incur uncompensated costs for providing services to persons denied eligibility due to the closure of the AHCCCS Care program. This initiative is referred to as the Safety Net Care Pool (SNCP). The federal government has stated that it is willing to approve the proposal if, among other details, a portion of the contributions from political subdivisions is used to increase KidsCare enrollment for children in households with income at or under 175% of the federal poverty level. Under the draft terms of the proposal, the SNCP and the associated KidsCare eligibility will be terminated on January 1, 2014.

If CMS approves the SNCP proposal, AHCCCS will use its existing authority under Arizona session law to promulgate proposed exempt rules. Specifically, Arizona Laws 2011, 1st Special Session, Ch. 1, § 1, exempts AHCCCS from the requirements of Title 41, Ch. 6, Arizona Revised Statutes, through January 21, 2013 for the purpose of applying for waivers from the requirements of the Social Security Act and establishing standards, methods and procedures for determining eligibility necessary to implement a program within state and federal appropriations. AHCCCS has the authority, under A.R.S. § 36-2995, to accept donations from any source (including political subdivisions) for the support of the KidsCare program. Under A.R.S. § 36-2985, AHCCCS has the authority (subject to approval by the Governor) to beginning processing new applications for KidsCare to the extent that funding permits. Because SNCP, as proposed to CMS, is funded through monies from political subdivisions and federal matching funds, it allows AHCCCS to establish reimbursement methodologies and increase enrollment of the KidsCare program without adversely impacting existing appropriations.

AHCCCS anticipates conducting exempt rulemaking to establish the standards, methods, and procedures for making a defined number of children on the KidsCare waiting list eligible using SNCP funds.

Final rulemaking is contingent upon CMS approval of a waiver and availability of political subdivision funding. In the event CMS does not approve the AHCCCS proposal then a Notice of Terminated Rulemaking will be filed.

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 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
9. **The summary of the economic, small business, and consumer impact, if applicable:**  
Not applicable
10. **A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):**  
No substantive changes have been made between the proposed rulemaking and the final rulemaking.
11. **An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:**  
No comments were received.
12. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:**
  - 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:**  
Not applicable
  - b. **Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than the federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**  
Not applicable
  - c. **Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**  
No analysis was submitted.
13. **A list of any incorporated by reference material and its location in the rule:**  
None
14. **Whether the rule was previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:**  
Not applicable
15. **The full text of the rules follows:**

TITLE 9. HEALTH SERVICES

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

ARTICLE 4. ~~REPEALED~~ KIDSCARE II PROGRAM

Section

R9-31-401. ~~Repealed~~ KidsCare II Program

ARTICLE 4. ~~REPEALED~~ KIDSCARE II PROGRAM

**R9-31-401. KidsCare II Program**

- A.** Subject to CMS approval and the availability of funding under the special terms and conditions of the 1115 Waiver, the Administration shall establish the KidsCare II program.
- B.** Subject to the availability of funding, the following children are potentially eligible under this Section notwithstanding the closure of new enrollment under Article 3 on December 21, 2009, due to a lack of available funding:
1. Children with household income at or below 175% of FPL, who are discontinued for eligibility under 9 A.A.C. 22, Article 14 effective on or after May 1, 2012, due to age.
  2. Children with household income at or below 175% of FPL, whose application for assistance was denied or discontinued as ineligible under 9 A.A.C. 22 on or after December 21, 2009 but who were determined potentially eligible for KidsCare as of the date of that denial or discontinuance and whose eligibility for KidsCare was not determined because the Administration stopped processing applications due to insufficient funding pursuant to R9-31-301(C).
- C.** Beginning on or before May 1, 2012, the Administration shall send notice of potential eligibility under this Section to as many households with children described in subsection (B)(2) as is estimated by the Administration as likely to result in the return of a sufficient number of applications to increase enrollment under this Section to the extent of available funding under this Section.
- D.** Notice of potential eligibility:
1. Children who were placed on the waiting list established under R9-31-302(F) on an earlier date shall receive notice before children placed on the waiting list on a later date.
  2. Notwithstanding subsection (D)(1), all children in the household will receive notice and be determined for eligibility based on the child in the household with the earliest applicable date.
  3. Households shall have 30 days to return an application to the Department.
  4. If notices that are initially sent under subsection (C) do not result in sufficient applications to enroll as many children as allowed by available funding, the Administration shall send out additional notices as described in subsection (C).
  5. Once the Administration has enrolled the maximum number of children consistent with funding made available under this Section, the Administration shall stop processing applications and determining eligibility under this Section.
- E.** The Department shall review all applications for a determination of eligibility under 9 A.A.C. 22. If the Department determines that a child is not eligible under 9 A.A.C. 22 but has income at or below 175% of FPL and meets all other eligibility criteria under R9-31-303, the Department shall refer the application to the Administration.
- F.** The Administration shall accept the Department's determinations regarding eligibility criteria without requiring the household to submit a new application under this Section or to re-verify information verified by the Department.
- G.** Upon referral of an application from the Department, the Administration shall:
1. Determine whether the application referred by the Department was from a household with a child described in subsection (B)(1) or from a household that received a notice under subsection (D) that submitted an application to the Department within 30 days of the Administration's request for a new application;
  2. Determine whether the household has any unpaid premiums as described in R9-31-1420 and, if so, the Administration shall require the household to pay the past due premium within 20 days from notification as a condition of determining a child eligible under this Section; and
  3. Enroll children under this Section based on the date that the Administration determines the child eligible.
- H.** Effective date of initial enrollment.
1. For an eligibility determination completed by the 25th day of the month, enrollment shall begin on the first day of the month following the determination of eligibility.
  2. For an eligibility determination completed after the 25th day of the month, enrollment shall begin on the first day of the second month following the determination of eligibility.
- I.** Any child who is not determined eligible under subsection (G) shall remain on the waiting list described in R9-31-302(F).
- J.** Eligibility for children under this Section ends on December 31, 2013.
- K.** Except as otherwise provided by this Section, eligibility shall be determined in accordance with the provisions of this Chapter.

NOTICE OF EXEMPT RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

Editor's Note: The following Notice of Exempt Rulemaking was exempt from Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1157.)

[R12-69]

**PREAMBLE**

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action:**  
R20-5-601.01 New Section
- 2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statutes (specific):**  
Authorizing statute: A.R.S. §§ 23-405(4), 23-410  
Implementing statute: A.R.S. § 23-492.01(A)
- 3. The effective date of the rule and the agency's reason it selected the effective date:**  
May 25, 2012  
Senate Bill 1441 from the 50th Legislature (*Laws 2012, Ch. 86*) amended A.R.S. Title 23, Chapter 2, by adding Article 13. This bill was passed with an emergency clause and became effective upon Arizona Governor Janice K. Brewer's signature on March 27, 2012. Part of the new bill, A.R.S. § 23-492.01, mandates that the Industrial Commission formally adopt the requirements of SB 1441 as part of Arizona's Occupational Safety and Health Plan within 30 days after the effective date of the bill. In compliance with that statute, the Commission formally adopted the requirements of Article 13 on April 25, 2012 as a rule. A.R.S. § 23-492.01 also mandates that the Commission's adoption of this new rule, Fall Protection for Residential Construction, become effective within thirty days after the Industrial Commission of Arizona's formal adoption of the requirements of the new Article 13. Accordingly, the effective date of this new rule is May 25, 2012.
- 4. Citations to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**  
Not applicable; Senate Bill 1441 (*Laws 2012, Ch. 86*) contains a provision that exempts the adoption of this rule from the rulemaking requirements of A.R.S. Title 41, Chapter 6. A.R.S. § 23-492.01(B).
- 5. The agency's contact person who can answer questions about the rulemaking:**  
Name: Darin Perkins  
Address: Division of Occupational Safety and Health  
Industrial Commission of Arizona  
800 W. Washington St., Suite 203  
Phoenix, AZ 85007  
Telephone: (602) 542-5726  
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- 6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**  
See item 3 above.
- 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:**  
Not applicable; Senate Bill 1441 (*Laws 2012, Ch. 86*) contains a provision that exempts the adoption of this rule from the rulemaking requirements of A.R.S. Title 41, Chapter 6. A.R.S. § 23-492.01(B).
- 8. 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; Senate Bill 1441 (*Laws 2012, Ch. 86*) contains a provision that exempts the adoption of this rule from the rulemaking requirements of A.R.S. Title 41, Chapter 6. A.R.S. § 23-492.01(B).

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- 9. The summary of the economic, small business, and consumer impact:**  
Not applicable; Senate Bill 1441 (*Laws 2012, Ch. 86*) contains a provision that exempts the adoption of this rule from the rulemaking requirements of A.R.S. Title 41, Chapter 6. A.R.S. § 23-492.01(B).
- 10. A description of any changes between the proposed rulemaking, to including supplemental notices, and final rule-making:**  
Not applicable; Senate Bill 1441 (*Laws 2012, Ch. 86*) contains a provision that exempts the adoption of this rule from the rulemaking requirements of A.R.S. Title 41, Chapter 6. A.R.S. § 23-492.01(B).
- 11. An agency's summary of the public stakeholder comments made about the rulemaking and the agency response to the comments:**  
Not applicable; Senate Bill 1441 (*Laws 2012, Ch. 86*) contains a provision that exempts the adoption of this rule from the rulemaking requirements of Title 41, Chapter 6. A.R.S. § 23-492.01(B).
- 12. 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 questions (a) through (c):**  
See item 3 above.
- a. Whether the rule requires a permit, whether a general permit is used and if not, the reason why a general permit is not used:**  
Not applicable; Senate Bill 1441 (*Laws 2012, Ch. 86*) contains a provision that exempts the adoption of this rule from the rulemaking requirements of A.R.S. Title 41, Chapter 6. A.R.S. § 23-492.01(B).
- 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:**  
Not applicable; Senate Bill 1441 (*Laws 2012, Ch. 86*) contains a provision that exempts the adoption of this rule from the rulemaking requirements of A.R.S. Title 41, Chapter 6. A.R.S. § 23-492.01(B).
- c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**  
Not applicable; Senate Bill 1441 (*Laws 2012, Ch. 86*) contains a provision that exempts the adoption of this rule from the rulemaking requirements of A.R.S. Title 41, Chapter 6. A.R.S. § 23-492.01(B).
- 13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:**  
This rule, R20-5-601.01, incorporates by reference A.R.S. Title 23, Chapter 2, Article 13.
- 14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**  
This rule was not previously made, amended or repealed as an emergency rule.
- 15. The full text of the rules follows:**

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Section

R20-5-601.01. Fall Protection for Residential Construction

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

**R20-5-601.01. Fall Protection for Residential Construction**

Each employer shall comply with the requirements in A.R.S. Title 23, Chapter 2, Article 13. These requirements shall apply to all conditions and practices related to residential construction activity by all employers, both public and private, in the state of Arizona.