

**NOTICE OF PROPOSED EXEMPT RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**

**ADMINISTRATION**

**PREAMBLE**

**1. Sections Affected**

**Rulemaking Action**

R9-22-217

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. §36-2903.01

Implementing statute: A.R.S. § 36-2907, amended by Section 13 of Laws 2011, Chapter 31 (“the 2011 Act”)

**3. The proposed effective date of the rules:**

October 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:**

Please submit comments by mail or email to the contact below. The public comment period closes at 5pm on August 21, 2011.

Name: Mariaelena Ugarte

Address: AHCCCS  
Office of Administrative and Legal Services  
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Phoenix, AZ 85034  
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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 regular rulemaking procedures:**

The Governor's Medicaid Reform Plan, as announced on March 15, 2011, includes proposals to reduce nonfederal expenditures for the AHCCCS program by approximately \$500 million during state fiscal year 2012. To achieve some of these reductions, the AHCCCS Administration has promulgated rules describing Inpatient limits. These limits also apply to the Federal Emergency Services program, therefore, the Administration is proposing an update to the rule which cross-references the Inpatient limit rule R9-22-204.

A.R.S. § 36-2907(D) states that AHCCCS shall adopt rules necessary to limit, to the extent possible, the scope, duration and amount of services, that are consistent with federal regulations for the Medicaid program. Those federal regulations require (1) that the State Plan for Medicaid must specify the amount, duration, and scope of each covered service, (2) that services must be sufficient in amount, duration, and scope to reasonably achieve its purpose, and (3) allow each State to place appropriate limits or exclusions on a service based on such criteria as medical necessity or on utilization control procedures. This proposed rule implements the statutory provision consistent with federal regulations. The limitations or exclusions to services included in the Arizona State Plan for Medicaid as described in this rule will be included in a State Plan Amendment submitted to the federal government in accordance with requirements for the Medicaid program.

At this time, the AHCCCS Administration has proposed to clarify that the Inpatient limits are also applicable to the Federal Emergency Service population for adults' age 21 years and older as described within the posted rule R9-22-217 on July 21, 2011.

In Arizona Laws 2011, Chapter 31, Section 13, the Legislature authorized the agency to adopt rules, including rules relating to limit, to the extent possible, the scope, duration and amount of services, including maximum limitation for inpatient services.

Arizona Laws 2011, Chapter 31, Section 34 authorizes the Administration to adopt rules necessary to implement the AHCCCS program within the available appropriations and exempts the Administration from the formal rulemaking requirements of A.R.S. Title 41, Chapter 6.

Arizona Law 2011, Chapter 31, Section 34 requires public notice with an opportunity for public comment of at least 30 days. Public notice of this rule making has been accomplished through publication of this rulemaking on the agency web site on July 21, 2011. A supplemental notice will also appear in the Arizona Administrative Register in advance of the close of the comment period. In addition, notice will be directed to those individuals who, prior to this proposed rule making have notified the agency of their desire to receive such notices directly pursuant to A.R.S. 36-2903.01(B)(6).

**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:**

No studies were relied upon for the implementation of this rulemaking, but analysis of the member utilization of Inpatient services reported through claims and encounters for dates of service during SFY 2010, has assisted the AHCCCS Administration in arriving at the proposed limitations. Prior to proposing this rule, AHCCCS reviewed historical information regarding utilization of the services limited by the proposed rule. Based on that review,

AHCCCS determined that approximately 96% of utilizing members would remain unaffected if these limitations are implemented.

**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:**

AHCCCS estimates that the limitations on inpatient days will reduce total expenditures by approximately \$64 million in combined state and federal funds for the last three quarters of the state fiscal year ending June 30, 2012 and approximately \$85 million for the following state fiscal year. It is difficult to estimate with any degree of certainty whether, or to what extent, this will result in less care being provided. As set forth in rule, in many instances health care providers are permitted to charge patients for services provided but not paid for by AHCCCS as a result of these limitations. It is equally difficult to estimate with any degree of certainty to what extent this rulemaking may result in health care providers rendering care without adequate compensation from sources other than AHCCCS.

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

The Administration initially proposed a revision to rule R9-22-210 to exclude the use of CPT code 99281 for facility services provided in an emergency department. As a result of feedback from the Center for Medicare and Medicaid Services (CMS), the Administration will not proceed with exclusion of CPT code 99281. Therefore, the Administration has limited the rulemaking to the change provided under R9-22-217 which cross references the promulgated Inpatient Limit rule R9-22-204 effective October 1, 2011.

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

Public comment period closes at 5pm on August 21, 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 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 2. SCOPE OF SERVICES**

Section

R9-22-217. Services Included in the Federal Emergency Services Program

## **ARTICLE 2. SCOPE OF SERVICES**

### **R9-22-217. Services Included in the Federal Emergency Services Program**

- A. Definition.** For the purposes of this Section, an emergency medical or behavioral health condition for a FES member means a medical condition or a behavioral health condition, including labor and delivery, manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:
1. Placing the member's health in serious jeopardy,
  2. Serious impairment to bodily functions,
  3. Serious dysfunction of any bodily organ or part, or
  4. Serious physical harm to another person.
- B. Services.** “Emergency services for a FES member” mean those medical or behavioral health services provided for the treatment of an emergency condition. Emergency services include outpatient dialysis services for an FES member with End Stage Renal Disease (ESRD) where a treating physician has certified for the month in which services are received that in the physician’s opinion the absence of receiving dialysis at least three times per week would reasonably be expected to result in:
1. Placing the member’s health in serious jeopardy, or
  2. Serious impairment of bodily function, or
  3. Serious dysfunction of a bodily organ or part.
- C. Covered services.** Services are considered emergency services if all of the criteria specified in subsection (A) are satisfied at the time the services are rendered. The Administration shall determine whether an emergency condition exists on a case-by-case basis.
- D. Prior authorization.** A provider is not required to obtain prior authorization for emergency services for FES members. Prior authorization for outpatient dialysis services is met when the treating physician has completed and signed a monthly certification as described in subsection (B).

E. Services rendered through the Federal Emergency Services Program are subject to all exclusions and limitation on services in this Article including but not limited to the limitations on inpatient hospital services in R9-22-204.