

NOTICE OF EXEMPT RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

PREAMBLE

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

R9-22-1443

Amend

2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific), and the statute or session law authorizing the exemption:

Authorizing statute: A.R.S. § 36-2903; 36-2903.01

Implementing statute: A.R.S. § 36-2901.01

Statute or session law authorizing the exemption: Arizona Laws 2010, Seventh Special Session, Chapter 10, § 34;
Arizona Laws, 2011, First Special Session, Chapter 1, Section 1(B); Arizona Laws, 2011,
First Regular Session, Chapter 31, Section 34.

3. The effective date of the rule and the agency's reason it selected the effective date:

The effective date is July 8, 2011. This amendment simply conforms the rule to the requirements of the phase out plan approved by CMS effective July 8, 2011 which requirements were continued as part of the Special Terms and Conditions of the Demonstration Project approved by CMS on October 21, 2011. This amendment reflects the agency's implementation of the rule as of July 8, 2011.

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: 17 A.A.R. 1023, May 20, 2011

Notice of Exempt Rulemaking: 17 A.A.R. 1345, July 22, 2011

5. The agency's contact person who can answer questions about the rulemaking:

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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 An agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:

The Administration is amending this rule to conform to the recently approved Demonstration Project under section 1115 of the Social Security Act with respect to medical coverage for the Medicaid expansion population sometimes referred to as "Childless Adults" or "AHCCCS Care."

Effective July 8, 2011, the AHCCCS Administration adopted R9-22-1443 which closed AHCCCS Care to new enrollment of Childless Adults. Arizona Administrative Register, July 28, 2011, Vol. 17, Issue 29, pages 1345-1360. As was the case for the initial version of the rule, this amendment to the rule is for the purpose of establishing a program within available appropriations and, as such, is exempt from the rulemaking requirements of Title 41, Chapter 6, Arizona Revised Statutes by virtue of Arizona Laws 2010, 7th Special Session, Ch. 10, § 34. In addition, this rule is exempt from the rulemaking requirements under Arizona Laws 2011, Chapter 31, Sec. 34. Please refer to the explanation for the original rule as published in the Arizona Administrative Register referenced above for more details.

"Childless Adults" are 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 19, a specified caretaker relative of a deprived child, age 65 or older, blind, or disabled. In general, a population must be described in the State Plan for Medicaid to qualify for federal financial participation in the cost of care for those persons. While Childless Adults are not listed in the Arizona State Plan for Medicaid, the Secretary of the United States Department of Health and Human Services, under the authority of section 1115 of the Social Security Act, has found that it would assist in promoting the objectives of Medicaid to allow Arizona to claim federal financial participation for the cost of extending Medicaid coverage to the Childless Adults as described in the Demonstration Project. That Project was approved on October 21, 2011, and can be reviewed at:

<http://www.azahcccs.gov/shared/news.aspx#ArizonaSection1115DemonstrationProjectWaiver>

As part of the Special Terms and Conditions of the Demonstration Project, AHCCCS is required to allow persons who were eligible under AHCCCS Care prior to July 8, 2011, to remain eligible under that category if they continuously complied with the procedural and substantive requirements for AHCCCS Care. In addition, those Special Terms and Conditions required AHCCCS to add certain persons to the AHCCCS Care eligibility category if they had been previously determined eligible under another category but lost eligibility for that category for certain specified reasons on or after July 8, 2011. Those persons include AHCCCS eligible persons who were eligible as children but who, after July 8, 2011, no longer meet the age requirement for that eligibility category (they "age out"). The Special Terms and Conditions also require that, with respect to AHCCCS Care eligible persons who are age 65 or over, under age 65 with Medicare benefits, or who have been

determined by the Arizona Department of Health Services to be a person with a Serious Mental Illness under A.R.S. § 36-550, AHCCCS must transition eligibility to the category for recipients of Supplemental Security Income but who do not receive a cash payment under that program (SSI-MAO) pending a determination of disability. AHCCCS is required to return to the AHCCCS Care category, those persons that are transferred but who are not ultimately determined to meet Medicaid standards for disability.

This amended rule implements the limited coverage for Childless Adults under the AHCCCS Care program as described in the Demonstration Project including the exception described in the Special Terms and Conditions of that Demonstration Project.

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:

The Administration does not anticipate any impact. This rule does not reflect a change in practice from the implementation of the rule that was effective July 8, 2011.

10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):

Not Applicable

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency

response to the comments, if applicable:

The following responses have been made for comments received as of close of the comment period December 3, 2011:

<u>Numb:</u>	<u>Date/ Commentor:</u>	<u>Comment:</u>	<u>Response:</u>
1.	11/11/11 Gary Brennan Quality Care Network	The age for childless adults should expand the group covered from birth through age 26, minimally. This will provide the best protection for those young adults transitioning from foster care, who decide to not stay under the programs of ADES/CPS at age of majority. It will also include those others who will not qualify, clinically, as seriously mentally ill (SMI) in the behavioral health delivery system. Many of these young adults need ongoing medications and other clinically supportive services to transition into independence and adulthood. Finally, it will match what is allowed under the Affordable Care Act for young adults fortunate to be within a family that has commercial insurance.	An expansion to all persons under the age of 26 could not be accomplished consistent with the appropriation to the agency. Similarly, the current demonstration project does not provide federal financial participation for all persons under the age of 26.
2.	11/30/11 Ellen S. Katz William Morris Institute	The Institute reiterates all the arguments it made on June 20, 2011. The proposed amended rulemaking and the initial rulemaking should be withdrawn.	See our responses to the comments made in the original rulemaking. Since the agency's response to the June 20, 2011 comments, the Arizona Court of Appeals upheld the legality of the initial proposed rulemaking and the freeze on enrollment for Childless Adults. In addition the federal government has approved a new demonstration project consistent with the provisions of this proposed rule following public notice and comment period consistent with the federal requirements.

		<p>H. The Categories Excepted From the Freeze Violate Equal Protection Protections of the State and Federal Constitutions</p> <p>As noted above, in Sections D-G of the proposed amended rule, certain individuals will be allowed to transition to other categories after July 8, or will be allowed to transition back to the childless adult category after July 8. These categories treat similarly situated persons differently in violation of equal protection under the Arizona and federal constitutions. As an example, a childless adult transferred to the SSI/MAO program in June 2011 but who subsequently is found not eligible for SSI will not be transferred back to the childless adult category. A similarly situated person transferred to the SSI/MAO category after July 8 will be transferred back to the childless adult category. There is no reason for this arbitrary distinction. All persons on the AHCCCS program as of July 8 must be allowed to transition to any other category including the childless adult category. Otherwise, the proposed amended rule creates discriminatory classifications.</p>	<p>The purpose of the rule is to preserve eligibility for those persons who benefited from the expanded definition of eligibility (coverage for Childless Adults) as of July 8, 2011 when the freeze went into effect and so long as they continue to meet eligibility requirement for AHCCCS Care (AC) and comply with renewal requirements. Pursuant to proposed subsection (G) and the terms of the current demonstration project, the Administration will identify those persons who on or after June 28, 2011 were eligible for AC but whose circumstances suggest that they could be more appropriately determined eligible under the state plan category for SSI/MAO. The eligibility status for these people will be administratively changed to SSI/MAO pending a complete determination of their eligibility for this category as of their regularly scheduled annual renewal date. These individuals should not be penalized by being discontinued based on an erroneous administrative action.</p>
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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:

This rule conforms to federal requirements reflected in the phase out plan approved by the federal government on July 8, 2011 and the Special Terms and Conditions of the Demonstration Project approved by the federal government on October 21, 2011.

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:

(Editor's (ote: If the answer is "yes" to Preamble item (12)(c), then the analysis should be filed with the rulemaking package.)

An analysis was not 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 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.** ~~Neither the Department nor the Administration shall approve as eligible for coverage individuals who apply on or after July 8, 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 an effective date on or after July 8, 2011 for the population described in ARS §36-2901.01 and AHCCCS Rule R9-22-1428(4), referred to in this rule as “AHCCCS Care.”~~
- ~~1. With respect to any applications that are pending as of July 8, 2011, the Department shall not approve any individual as eligible for AHCCCS Care who has not met all eligibility requirements prior to July 8, 2011.~~
 - ~~2. This rule does not prohibit the redetermination of an individual as eligible for AHCCCS Care on or after July 8, 2011, if the individual was determined eligible for AHCCCS Care prior to July 8, 2011 and has remained continuously eligible since the date of the determination of eligibility that occurred prior to July 8, 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 and subject to approval by the Center for Medicare and Medicaid Services, 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 described under subsection (B) shall be provided thirty days prior to the effective date of the change via publication on the AHCCCS website unless shorter notice is necessary to maintain a program that is reasonably anticipated to remain within available funding.~~
- A.** Definition. For purposes of this section, “AHCCCS Care” refers to the eligibility category that includes individuals encompassed within the expanded definition of “eligible person” under A.R.S. § 36-2901.01 and R9-22-1428(4), but who do not meet eligibility criteria for an optional or mandatory Title XIX coverage group described in the Arizona State Plan for Medicaid.
- B.** General Rule. Except as provided by this section, neither the Department nor the Administration shall approve an individual for AHCCCS Care with an effective date of eligibility on or after July 8, 2011.
- C.** Exception for pending applications. With respect to any applications that are pending as of July 8, 2011, the Department and the Administration shall approve any individual as eligible for AHCCCS Care who has met all eligibility requirements for AHCCCS Care during or after the month of application but prior to July 8, 2011, and has continuously met all eligibility requirements for AHCCCS Care since that date.

- D.** Exception for children. The Department and the Administration shall approve an individual as eligible for AHCCCS Care on or after July 8, 2011 who:
1. Was determined eligible under the Arizona State Plan for Medicaid based on being under the age of 19;
 2. Would otherwise be discontinued due to reaching the age of 19 on or after July 8, 2011, under subsection (B). of this section; and
 3. Meets all eligibility requirements for AHCCCS Care on and after reaching age 19.
- E.** Exception for KidsCare. The Department and the Administration shall approve an individual as eligible for AHCCCS Care on or after July 8, 2011 who:
1. Was determined eligible under 9 A.A.C. 31 based on being under the age of 19;
 2. Would otherwise be discontinued due to reaching the age of 19 on or after July 8, 2011, under subsection (B). of this section; and
 3. Meets all eligibility requirements for AHCCCS Care on and after reaching age 19.
- F.** Exception for Young Adult Transitional Insurance (YATI). The Department and the Administration shall approve an individual as eligible for AHCCCS Care on or after July 8, 2011 who:
1. Was determined eligible for YATI under R9-22-1432;
 2. Would otherwise be discontinued due to reaching the age of 21 on or after July 8, 2011 under subsection (A). of this section; and
 3. Meets all eligibility requirements for AHCCCS Care on and after reaching age 21.
- G.** Exception for certain SSI-MAO. The Department and the Administration shall approve as eligible for AHCCCS Care, on or after July 8, 2011, an individual who:
1. Was determined eligible for AHCCCS Care; and
 2. Whose eligibility category is changed on or after June 28, 2011, from AHCCCS Care to eligibility based on R9-22-1501(A)(1) (SSI Medical Assistance Only) because the individual, at the time of the change in eligibility category, is age 65 or over, under the age of 65 with Medicare coverage, or who has been determined by ADHS to have a Serious Mental Illness; but who
 3. Subsequent to the change in eligibility category, is determined not to meet eligibility requirements under Article 15; but only if
 4. The individual meets all eligibility requirements for AHCCCS Care on and after the date the individual is determined not to meet eligibility requirements under Article 15.
- H.** Exception for redeterminations. This section does not prohibit the redetermination of an individual as eligible for AHCCCS Care on or after July 8, 2011, if the individual was determined eligible for AHCCCS Care prior to July 8, 2011 and has remained continuously eligible for AHCCCS Care since July 8, 2011 or the date on which the individual was determined eligible for AHCCCS Care under subsections (C), (D), and (E). of this section.

- I.** Discontinuance for other reasons. Nothing in this rule prohibits or restricts the Department or the Administration from discontinuing AHCCCS Care for an individual who does not meet any other eligibility criteria set forth elsewhere in this Chapter including but not limited to discontinuance based on the individual's failure to verify eligibility information upon an application or redetermination.

- J.** Review of anticipated expenditures. 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, subject to approval by the Center for Medicare and Medicaid Services, re-open the AHCCCS Care program to new enrollment otherwise prohibited by this rule.

- K.** At least thirty days prior to the effective date of any changes to eligibility for the AHCCCS Care program as described in this rule, public notice shall be provided via publication on the AHCCCS website unless shorter notice is necessary to maintain a program that is reasonably anticipated to remain within available funding.