

**NOTICE OF EXEMPT RULEMAKING**

**TITLE 9. HEALTH SERVICES**

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

**ADMINISTRATION**

**PREAMBLE**

**1. Sections Affected**

**Rulemaking Action**

R9-22-1442

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, Seventh Special Session, Chapter 10, § 34;  
Arizona Laws, 2011, First Special Session, Chapter 1, Section 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:**

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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 rule-making 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, Seventh Special Session, Chapter 10, Section 34, reads:

The Arizona health care cost containment system is exempt from the rule making 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.

Arizona Laws, 2011, First Special Session, Chapter 1, Section 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 rule making 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, Chapter 344, Section 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 rule-making 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 in its evaluation of or justification for the rule 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 5 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 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, Chapter 344, Section 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 6 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 website at: <http://www.azahcccs.gov/reporting/federal/waiver.aspx#med>

<b><u>#:</u></b>	<b><u>Date/ Commentor :</u></b>	<b><u>Comment:</u></b>	<b><u>Response:</u></b>
1.	03/20/11 Dagon 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

			<p>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 6 months. The elimination of this program is necessary for the Administration to comply with legislative direction to establish an AHCCCS program within legislative appropriation.</p> <p>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.</p>
2.	03/20/11 Shultz4U	<i>What about those needing life saving medications they can not 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.
3.	03/20/11 Mudman	<p><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.</i></p> <p><i>2. If this measure was voted in by the public, it should not be eliminated by politics.</i></p>	The MED program under A.R.S.36-2901.04 was not established by voter initiative.
4.	03/20/11 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	<i>It is very clear that they (legislature) would</i>	The AHCCCS Administration does not have the authority to

	Ken Jacobsen	<i>rather give tax cuts to the wealthy and corporations than to provide healthcare to the Arizonans who need it.</i>	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 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 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.  The Administration has reinstated coverage for transplants in accordance with recent legislation.
8.	03/21/11 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 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	<i>My 47-year-old daughter, Debbie Clark, has</i>	Disabled individuals could qualify for a program for the

	Barb Clark	<i>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. What about doing some research to find out who really needs the AHCCCS program rather than just dumping everyone.</i>	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).  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.
11.	03/23/11 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 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.  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 ziggy	<i>Considering charging patients \$50 a year if they smoke, have diabetes or are overweight. I am a type 1 diabetic, am not a fat and lazy</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

		<i>person. I did NOT bring diabetes on myself, I was BORN with it.</i>	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 Matt Jewett 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.  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.  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 Joan Sacramento	<i>These changes will impact many vulnerable adults who have no money and little ability to get health care. 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 Janice Ertl 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. 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. 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 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</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

		<p><i>cuts on important things. There are concerns with persons who have appointments and come in with luxuries, such as name brand handbags and IPADs.</i></p> <p><i>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></p>	<p>federal law. Within those limitations it is not possible to establish a copayment schedule that would offset the cost of the MED program.</p> <p>If you suspect fraud within the AHCCCS program, please report it by calling 1-888-ITSNOTOK.</p>
18.	04/09/11 Gabrielle Burhans National Alliance on Mental Illness (NAMI)	<p><i>By requesting a waiver from your office our Governor and Legislature are effectively repealing Proposition 204 and this violates the voter's mandate.</i></p> <p><i>Insist that Arizona provide individuals with the health care coverage they need and have paid for with their tax dollars.</i></p>	<p>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>.</p> <p>AHCCCS is working diligently with CMS to ensure that no SMI individuals who meet the federal definition of disability lose coverage through this transition.</p> <p>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.</p>
19.	04/09/11 Dr. Allan Peters	<p><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</i></p>	<p>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 website at : <a href="http://www.azahcccs.gov/reporting/state/comments.aspx">http://www.azahcccs.gov/reporting/state/comments.aspx</a></p> <p>The MED program is not voter protected because A.R.S. §</p>

		<p><i>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.</i></p> <p><i>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></p>	<p>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.</p> <p>In addition, persons meeting the federal definition of disabled with income under the federal poverty level can retain coverage.</p>
20.	04/11/11 Cynthia Furrh Community Assistance Center in Apache county	<p><i>You are putting the people of rural Arizona in great and serious danger. Services are difficult to access now. If these cuts go through there will be no services available.</i></p> <p><i>Apache County is the poorest county in the state. The towns are 30 miles or more in distance.</i></p> <p><i>This proposal will eliminate the ability for our Seriously Mentally Ill to receive services, obtain medication, or participate in therapy.</i></p> <p><i>When these changes were proposed did anyone think of the hardship that the rural communities would suffer?</i></p> <p><i>The truth is that the rural communities are going to suffer for lack of population.</i></p>	<p>AHCCCS is working diligently with CMS to ensure that no SMI individuals who meet the federal definition of disability lose coverage through this transition.</p>
21.	04/12/11 Carl Morris-Jackson	<p><i>Are we under the premise that canceling the program will also cancel out the deficit of care needed for people needing medical care?</i></p> <p><i>We need to do what is necessary to make sure that our people in need are provided for.</i></p>	<p>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.</p>

			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.
22.	04/13/11 Deb Holland 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>	<p>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.</p> <p>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.</p>
23.	04/13/11 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>	<p>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.</p> <p>The goal is to preserve coverage for persons who are below the federal poverty level.</p> <p>We encourage you to contact your legislator directly.</p>
24.	03/23/11 (mailed comment) 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</i>	<p>Many people are qualified for AHCCCS as a result of their disability.</p> <p>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</p>

		<i>program as it is very desperately needed by these catastrophically ill patients.</i>	programs.
25.	04/14/11 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 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 AZHHA	<i>AzHHA opposes the phase-out and ultimate elimination of the MED program. “These individuals do not have any other health insurance.”  “Elimination of this program will put added and unnecessary financial stress on many patients whose primary focus should be on their recovery.”</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.  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

		<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>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>
28.	04/18/11	<i>The Institute objects to AHCCCS’ proposed</i>	State law does not require a phase out plan prior to the phase

	<p>Ellen Katz Morris Institute</p>	<p><i>rulemaking 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>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, Seventh Special Session, Chapter 10, Section 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 C.F.R. § 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</p>
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		<p><i>did not affirmatively state it will continue benefits pending eligibility appeals when requested;</i></p> <p><i>and intends to use an inadequate notice for the phase out process.</i></p>	<p>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> <p>Beneficiaries' entitlement to continued benefits pending an eligibility appeal are set forth in Arizona Administrative Code, R9-34-114. Those rules are consistent with federal requirements in 42 C.F.R. 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.</p> <p>The requirements regarding notices of adverse actions by the agency are set forth in Arizona Administrative Code R9-22-1413 and 1415. Those rules are consistent with federal requirements in 42 C.F.R. 431, Subpart E. This proposed rulemaking does not alter or amend existing State rules regarding continued benefits.</p> <p>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 website.</p>
29.	04/18/11 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 Susan Price AZ Kidney Disease and Hypertension Center (mailed 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>	<p>The MED program is statutorily limited to no more than 6 month blocks of eligibility. This means that at least every 6 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.</p> <p>Many patients with ESRD are eligible for coverage through Medicare.</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:**

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.