

NOTICE OF PROPOSED EXEMPT RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION

PREAMBLE

1. Sections Affected

Rulemaking Action

R9-22-206

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; Senate Bill 1619 of the First Regular Session of the 50th Arizona State Legislature, §§ 34 and 38 as signed into law by the Governor on April 6, 2011.

3. The proposed effective date of the rules:

April 1, 2011.

4. A list of all previous notices appearing in the Register addressing the proposed exempt rule:

Notice of Proposed Exempt Rulemaking: To be filled in by Editor (volume #) A.A.R. (page #), (date)

This proposed revision makes no substantive revisions to the amendments reflected in the Notice of Proposed Exempt Rulemaking published to the AHCCCS website on April 7, 2011. The Notice posted on that date incorrectly reflects amendments to a prior version of A.A.C. R9-22-206 which was no longer in effect. That rule was amended effective July 15, 2010 and again with changes effective October 1, 2010. The April 7, 2011 NOPER incorrectly shows amendments to the July 15, 2010 version of the rule rather than the October 1, 2010 version. This Notice reflects the amendment that is currently proposed as changes to the October 1, 2010 version of the rule. This Notice does not change the substance of the April 7, 2011 Notice which was to restore coverage for certain transplants pursuant to SB 1619.

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Written comments concerning this proposed rule may be submitted to the AHCCCS Administration or submitted electronically via the AHCCCS website www.azahcccs.gov. Submitting comments via the website is recommended. All comments must be received no later than 5:00 p.m. May 6, 2011.

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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 AHCCCS Administration is initiating this proposed exempt rule-making 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, Seventh Special Session, Chapter 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 rule making, 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. Section 38(B) of Senate Bill 1619 of the First Regular Session of the 50th Arizona State Legislature, as signed into law by the Governor on April 6, 2011 ("the 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 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:

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 ten 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):

Not applicable.

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

None have been received yet.

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

R9-22-206. 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;~~
 - ~~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).