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Entitlement to Workers' Compensation for Workers Receiving the Smallpox Vaccination in Arizona

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.

Pursuant to the intent of the Homeland Security Act, many people in the United States will soon begin receiving the vaccination for smallpox. Arizona, like other states, has developed a plan to vaccinate certain health care professionals in the first round of vaccinations. Many states, including Arizona, are discussing the issue of compensation for health care workers who become ill or have an adverse reaction after being vaccinated.

The Arizona vaccination plan was developed by the Arizona Department of Health Services and is a comprehensive plan which schedules receipt of the smallpox vaccination in phases, beginning in early 2003. DHS has scheduled approximately 7,600 health care workers across the State in the first phase of vaccinations. Although the vaccination is voluntary, many health care professionals may choose to receive it.

The vaccination procedure is a fairly simple routine. However, given the nature of the vaccine, it is expected that some workers receiving it will experience adverse reactions and become ill. In an effort to address questions regarding entitlement to workers' compensation for those health care workers who experience an adverse reaction to the vaccine, the Industrial Commission of Arizona ("ICA") conducted an analysis of the legal grounds for such entitlement. After a review of the historical legal precedent and information from other states and the federal government, the ICA takes the position that a public health or health care worker who, because of their employment, receives the smallpox vaccine under Arizona's Smallpox Pre-Event Vaccination Plan, and suffers an

adverse effect from the vaccine requiring medical treatment shall be considered as having sustained an "injury by accident arising out of and in the course of employment." As such, the worker would be entitled to receive benefits as authorized under the Arizona Workers' Compensation Act. If, in a particular case, there is a dispute regarding coverage for, or entitlement to, workers' compensation benefits, the dispute would be handled as other disputes are handled before the ICA.