



Arizona Hospital and Healthcare Association

April 8, 2011

The Honorable Kathleen Sebelius
Secretary
United States Department of Health and Human Services
200 Independence Avenue S.W., Room 120-F
Washington, D.C. 20201

Dear Secretary Sebelius:

On behalf of the Arizona Hospital and Healthcare Association (AzHHA) and our 104 member hospitals, I submit the following comments on the Arizona Health Care Cost Containment System (AHCCCS) Administration's March 31 amended request for a new Section 1115 Research and Demonstration Waiver ("demonstration waiver") for the period of October 1, 2011 through September 30, 2016. Arizona hospitals are deeply committed to their collective mission of providing high-quality, cost-effective medical treatment to all who need care. As this letter will describe, AzHHA supports several elements of the AHCCCS Administration's waiver request. **However, we are compelled to draw your attention to a number of the requested policy changes that will have far reaching and devastating consequences for Arizona's most vulnerable citizens and the healthcare providers who care for them. Moreover, these changes are unnecessary because a coalition of Arizona hospitals, Medicaid health plans and skilled nursing facilities have proposed a viable alternative—a special healthcare assessment that would generate \$465 million to preserve coverage for low-income Arizonans.**

As you know, the AHCCCS Administration's waiver request is part of a package of Medicaid reforms Governor Jan Brewer recently unveiled. The reforms form the basis of the phase-out plan for Arizona's Medicaid expansion population, which was established as a voter-approved initiative often referred to as "Proposition 204." Your February 15 letter to Governor Brewer stated the plan was required in the event that Arizona chose to let the existing state demonstration waiver expire.

AzHHA has long supported the expansion of health insurance coverage made possible by Proposition 204. Unfortunately, the fiscal and political realities currently facing Arizona require us to reexamine the viability of the program as it is currently structured. Given these unusual circumstances, it is clear that the program must be restructured if it is to survive at all. First and foremost, a dedicated funding source must be established for the program, and enrollment must be aligned with this revenue stream. Second, the program should include elements that 1) encourage Medicaid beneficiaries to take responsibility

for their own health and 2) encourage appropriate utilization of the healthcare system. These principles also underpin Governor Brewer's Medicaid reform plan. And with this in mind, we support many elements of the governor's plan. Most importantly, we applaud her effort to continue covering the existing expansion population enrollees rather than simply eliminating coverage of the entire population on October 1, 2011. This said, we cannot support all of the proposed reforms. As explained below, we have significant concerns with several elements of the proposal.

General Comments

As stated previously, we appreciate and support Governor Brewer's effort to preserve coverage for the existing Proposition 204 population. Our goal is to provide her and the state Legislature with additional resources to preserve coverage for even more Arizona residents. Over the past several weeks, we have met with lawmakers and the governor to build support for a set of healthcare assessments that could be used to provide a dedicated revenue stream for the Proposition 204 program for the next three years. We believe this revenue stream is the key to maintaining not only the financial viability of the Proposition 204 program, but also the overall viability of the AHCCCS program and the state's healthcare safety net during this time period.

As you know, Governor Brewer's plan to reform Medicaid and preserve coverage for the existing Proposition 204 population is funded from savings derived from cuts to other components of the AHCCCS program, including provider rates. As this letter will describe, these cuts are untenable and will devastate the healthcare safety net. If the governor's plan is implemented, hospitals stand to lose \$530 million in revenue during FY 2012. This loss follows on the heels of \$700 million in hospital payment cuts and rate freezes that the Legislature has imposed since 2008, bringing the total hospital cuts to \$1.3 billion.

While Arizona lawmakers did not include our proposed healthcare assessments as part of the FY 2012 budget they passed last week, we remain optimistic that the Legislature will ultimately revisit the proposed assessments. **However, we note that if the Department of Health and Human Services (HHS) approves certain aspects of the Demonstration Waiver and State Plan Amendment (SPA) submitted by the state of Arizona, the likelihood of the Legislature supporting our healthcare assessments diminishes, which would be disastrous for low-income Arizonans seeking healthcare and the entire healthcare delivery system.** With this in mind, we will continue our advocacy in the coming weeks while HHS deliberates the AHCCCS Administration's phase-out plan for the expansion population and will keep you updated on our progress and as other scenarios in the state unfold.

Medicaid Eligibility

1. Request to Eliminate Medical Expense Deduction (MED) Program

As stated in my April 5 letter to you, AzHHA opposes the phase-out and ultimate elimination of the MED program. This program covers approximately 5,800 Arizonans who normally would not qualify for AHCCCS because their household income is more than 100 percent of the federal poverty level (FPL). The MED program beneficiaries qualify because they have incurred significant healthcare expenses through a catastrophic medical event that reduces their countable income to less than 40 percent FPL. These individuals do not have any other health insurance, and have typically had their monthly income interrupted by an accident or extended serious illness. The MED program is a short-term program with blocks of eligibility lasting anywhere from three to six months, depending on household circumstances.

The hospital community is deeply concerned about the impact of the freeze on Arizona residents who otherwise would have been eligible for the program and the healthcare providers who care for them. Patients in the MED program are at their most vulnerable; they are often struggling to recover from a traumatic injury or a severe illness that has rendered them unable to work. This set of circumstances could happen to anyone, and AHCCCS' current program helps people unfortunate enough to be in this situation to pay their medical bills, which could otherwise force them into bankruptcy. As part of the healthcare community, we are concerned that elimination of this program will put added and unnecessary financial stress on many patients whose primary focus should be on their recovery.

Elimination of this program will also financially strain hospitals and caregivers. While the number of patients covered by the MED program is small compared to AHCCCS' overall enrollment, the proportional cost of covering this group is higher due to the catastrophic nature of the injuries or illnesses MED enrollees experience. Hospitals bear a large portion of this cost. In calendar year 2009, AHCCCS payments to hospitals for the MED program totaled more than \$136 million, with more than \$21 million paid to 25 rural hospitals. If the MED program is phased out on October 1, 2011, AzHHA estimates that hospitals will lose approximately \$70 million for the nine-month period of SFY 2012. Most of this will translate directly into uncompensated care, because hospitals must take care of these patients. These are not patients who are over-utilizing services; this truly is a medically needy and particularly vulnerable population.

2. Request to Replace Current Childless Adult Program

The AHCCCS Administration seeks to replace the existing waiver authority for the childless adult population (CNOM #16) with a new Demonstration Waiver that would maintain coverage for childless adults up to 100 percent FPL who were enrolled in the

program before July 1, 2011. According to the AHCCCS Administration's 1115 Waiver Amendment Request:

Enrollment would remain frozen, and the State would have authority and flexibility to make changes in eligibility to maintain the program within funding limits. While the intent for FY 2012 is to operate the program under a freeze, the State is seeking the ability to manage the population depending on available funds.

AzHHA understands the need for this amendment request, but opposes funding the Proposition 204 population through additional provider rate cuts and other changes to the program that will increase uncompensated care. As mentioned previously, we believe that the Proposition 204 program, which covers childless adults, must be restructured to better align with budgetary constraints. **With this in mind, AzHHA has joined a coalition of healthcare stakeholders to propose a set of healthcare assessments to be used as a dedicated revenue stream for the Proposition 204 population. If approved by the Arizona Legislature and the Centers for Medicare and Medicaid Services (CMS), the annualized assessments, which would be levied on hospitals, nursing facilities and health plans, would provide up to \$465 million in state funds for the Proposition 204 program on an annualized basis. The size of the program would be tied to available funding.** We are optimistic that over time, the freeze proposed in the amendment request could be lifted and an enrollment cap implemented, but this will only happen if the Arizona Legislature approves the healthcare assessments.

The dedicated healthcare assessments, which would eliminate the need for the state general fund to support the Proposition 204 population, **would also make it unnecessary to cut other components of the AHCCCS program called for in the governor's Medicaid reform plan, including reductions in provider rates.** This is an important element of our proposal, since the rate reductions that AHCCCS intends to submit as state plan amendments are unsustainable and will impact the level and quality of healthcare services available to Medicaid beneficiaries and all Arizonans.

3. Request to Freeze Enrollment for Parents from 75 Percent to 100 Percent FPL

As mentioned in the previous section, AzHHA supports controlling the cost of the Medicaid program through a freeze and an eventual enrollment cap on the Proposition 204 population that would be funded through the special healthcare assessments.

However, we do not support freezing enrollment of section 1931 parents earning between 75 percent and 100 percent FPL. Rather, appropriate state funding should be identified for this population. For example, the budget the governor proposed in January set aside \$50 million to partially offset uncompensated care hospitals would have incurred as a result of a complete rollback of the Proposition 204 program. We have

suggested to policymakers that these monies instead be used to support Section 1931 parents. Alternatively, the special healthcare assessments could be used to fund a portion of this population.

4. Request to Eliminate Coverage for Federal Emergency Services (FES)

AzHHA opposes the state's request to eliminate coverage under the FES program. The elimination of Medicaid reimbursement for emergency care provided to non-qualified aliens would directly translate into uncompensated care for hospitals and the physicians who treat these patients. The AHCCCS Administration has estimated that eliminating this program will save the state general fund approximately \$20 million in SFY 2012. However, healthcare providers would lose approximately \$60 million due to the loss in federal matching funds.

Since 2008, state Medicaid disproportionate share hospital (DSH) payments to private qualifying Arizona hospitals have been cut by nearly two-thirds. For SFY 2012, only \$9 million remains in the state private DSH pools compared to \$26 million in SFY 2008. Hospitals fortunate enough to secure local government or state university funds may qualify for additional amounts under a local pool, but given recent cuts to university budgets and urban revenue sharing, this is becoming a less viable option. An additional \$60 million in uncompensated care on top of the recent cuts to DSH and other payments will unravel Arizona's healthcare safety net. Moreover, this policy change would be patently unfair in light of the fact the federal Emergency Medical Treatment and Labor Act requires hospitals to treat all patients who present to their emergency departments without regard to citizenship status.

Request to Implement Provider Rate Cuts

Governor Brewer's Medicaid reform plan proposes to cut provider rates by an *additional* 5 percent and reduce managed care rates, effective October 1, 2011. The provider cuts come on the heels of a 5 percent rate cut that went into effect April 1, 2011 and a series of rate freezes and cuts to institutional and non-institutional providers that have been imposed since 2008. Hospitals stand to lose approximately \$95 million under the October rate cut, and physicians would lose \$88 million. In total, the April and October rate cuts result in payment reductions of \$600 million for all providers.

These cuts are simply unsustainable, and will jeopardize quality of care and network adequacy. As the state points out in its discussion of budget neutrality that was submitted with its amended Demonstration Waiver request:

Failure to recognize future provider rate growth could limit the State's provider network and potentially reduce competition that that has kept Arizona's costs lower than the national levels.

Hospitals in areas with high Medicaid and Medicare utilization, such as rural Arizona, report that physician recruitment is increasingly difficult. Reductions in provider payments are exacerbating a physician shortage in these medically underserved areas.

Arizona hospitals and economists predict these cuts will force widespread job losses that will begin in the healthcare industry and then ripple throughout other sectors of Arizona's economy. The cuts will also lead to significant reductions in services and the possible closure of some hospitals. Finally, the provider rate reductions will force hospitals to shift costs to commercial health plans, driving up the "hidden healthcare tax" on employers and families who purchase private health insurance.

AzHHA does not believe the new payment levels are consistent with rates necessary to ensure consistency, efficiency and quality of care. We are particularly concerned that the reduced rates may result in the closure of rural hospitals, which would decrease the availability of services in rural Arizona.

Moreover, these cuts are not necessary from a budgeting perspective. As mentioned previously, AzHHA and a coalition of healthcare stakeholders have proposed using a set of special healthcare assessments to fund a scaled-back Proposition 204 population. While the governor's Medicaid reform plan would fund continued enrollment of the expansion population from savings derived from cuts to provider payments and other components of the AHCCCS program, we propose using these new healthcare assessments to fund the program.

AzHHA strongly urges CMS to oppose any new rate reduction proposals that are submitted as a state plan amendment.

Payment Reforms

The state requests waiver and expenditure authority for delivery and payment system reforms to improve quality of care, such as medical homes and accountable care organizations (ACOs). Hospitals around the state have already begun to work on these models with commercial payers. With the recent release of the *Affordable Care Act's* proposed regulations on ACOs, hospitals look forward to participating in these models with government payers, such as Medicare and Medicaid. **With this in mind, AzHHA supports the state's waiver and expenditure authority request to develop and implement these new delivery system reforms.** We further welcome the opportunity to partner with AHCCCS on the development of these models.

Personal Responsibility

1. Implement Mandatory Copayments for Adults

AzHHA supports the state's request to conduct a Demonstration requiring copayments for all adults, except those in the Arizona Long Term Care System. These copayments would mirror those applied to the Temporary Medical Assistance (TMA) population. The AHCCCS Administration also proposes to test the use of penalties and incentives to promote healthy lifestyle choices and disease self-management. For example, adults who smoke, who are obese, or who fail to meet steps necessary to manage a chronic disease would be subject to an additional copayment. To promote appropriate healthy behaviors, the AHCCCS Administration plans to apply funds through incentive grants under the *Patient Protection and Affordable Care Act* and through a \$400,000 grant awarded to the Arizona Department of Health Services to encourage members to meet wellness initiatives and manage chronic illness.

The purpose of this Demonstration is twofold: (1) to test the linkage between copayments, incentive strategies and healthy lifestyle choices, behaviors and outcomes; and (2) to reduce costs within the program in an effort to preserve coverage to the greatest extent and preserve as many life-saving benefits as possible.

AzHHA believes this approach has merit. As you know, there are many cost-drivers in healthcare, one of which is lifestyle choices. While it is commonplace to refer to certain activities (e.g., smoking) as personal choices, these choices have consequences for public health and the overall healthcare economy. While the details of this proposal need to be fleshed out and the copayments must be assessed in a manner that does not unfairly penalize patients for circumstances beyond their control, we support strategies that promote wellness and personal responsibility.

2. Request to Implement Mandatory Copayments for Children

AzHHA supports the state's request to conduct a Demonstration requiring copayments for children. As with the mandatory copayments for adults, the copayments for children would mirror those in the TMA population. The AHCCCS Administration would also require copayments for children who do not meet their well-exam requirements or keep immunizations current. However, incentives would be provided to those families who ensure their child is up to date on these preventative measures. Children who are obese and/or diagnosed with certain chronic conditions would also need to meet care plans outlined by their pediatricians, or a copayment would be assessed. Again, while the details of this proposal need to be further developed and the copayments must be assessed in a manner that does not unfairly penalize patients for circumstances beyond their control, we support the general concept.

3. Request to Implement Penalty for Missed Appointments

The state seeks waiver authority to allow healthcare providers to assess fees for missed appointments. AzHHA supports the efficient utilization of medical resources, and understands provider concerns when patients do not show up for scheduled appointments. Should CMS grant the waiver, we will urge the AHCCCS Administration to 1) adopt reasonable guidelines for the assessment of missed appointment fees and 2) implement a process to monitor the impact of the fees on missed appointment rates.

Benefit Changes

1. Request to Limit Coverage for Non-Emergency Medical Transportation (NEMT)

The state seeks to eliminate NEMT for non-disabled childless adults and non-disabled parents in urban Maricopa and Pima counties and requests the authority to impose a copayment for non-disabled childless adults and non-disabled parents in other areas of the state. The AHCCCS Administration proposes to conduct a one-year review of the elimination of NEMT to determine the impact on access to care. If the effect of elimination of NEMT proves deleterious to beneficiaries, AHCCCS will complete a corrective action plan that must be approved by CMS but that still fits within budgetary constraints. If no appropriate corrective action plan can be constructed, then the state has agreed to restore the benefit. **AzHHA believes this is reasonable approach to NEMT benefit reform and we urge CMS to approve the waiver request.**

2. Request to Institute a 25-day Hospital Inpatient Limit for Adults

Governor Brewer's Medicaid reform plan proposes a 25-day hospital inpatient limit for adults. The details of the proposal are not contained in the state's 1115 waiver amendment request, but it is our understanding the proposal will be submitted in a separate SPA. AzHHA has not seen the details of this proposal, but we have serious concerns with the concept. As noted above, since 2008, hospitals' Medicaid revenue has shrunk by more than \$700 million due to rate freezes and cuts. Effective April 1, 2011, AHCCCS payments to hospitals and other providers were cut by another 5 percent. Currently, AHCCCS pays hospitals less than 70 percent of their cost. Hospitals have little choice but to shift these losses to commercial insurers, businesses and patients.

A limit on inpatient bed days will have no effect on Medicaid utilization in Arizona, and will add no savings to Arizona's overall healthcare system. Indeed, a limit on inpatient bed days will add to the cost shifting described above. Because the AHCCCS program is based almost entirely on a managed care model, utilization is already well managed. Regardless of the imposition of a bed-day limit, doctors will continue to schedule discharges that are in the best interest of their patients as their professional ethics and standards of care require. Moreover, a hospital that bases a discharge decision on an

insurance benefit limitation places itself at risk, if the discharge is medically inappropriate or in violation of Medicare Conditions of Participation. The state's proposal to limit inpatient day benefits will merely result in more hospital uncompensated care and cost shifting to the private sector. **We strongly urge CMS to oppose this proposal when it is submitted as a state plan amendment.**

Other

1. Request to Avoid Cost Shift to Indian Health Services and 638 Facilities

The state proposes to exempt benefit restrictions and eligibility changes for services and benefits obtained through Indian Health Services (IHS) or 638 facilities. This exemption would allow IHS and 638 facilities to continue to provide all benefits at their facilities at 100 percent federal financial participation. This would also maintain eligibility for the childless adult population and parent population under the current open enrollment model.

According to the AHCCCS Administration, the objective is to ensure the viability of the IHS and 638 systems for the provision of care to American Indians and to avoid shifting the burden of the state budget deficit onto tribes and IHS. AzHHA supports this objective. However, IHS and 638 facilities are not alone in treating tribal members. Since many of IHS and 638 facilities are located in rural areas, they do not offer the full spectrum of medical services available at tertiary hospitals and trauma centers. Both IHS and 638 hospitals must routinely transfer tribal members to regional medical centers and larger community hospitals. When these patients receive care in these other locations, AHCCCS' eligibility reductions, rate cuts, and benefit reductions will continue to apply, which then shifts the cost of this care to healthcare providers. Accordingly, AzHHA believes that coverage provisions and benefits provided to tribal members should "follow" the patient regardless of where the patient is treated. **We urge CMS to support this broader application of the state's request.**

2. Ex Parte Cases

Individuals who qualify for supplemental security income (SSI) are typically automatically eligible for AHCCCS. If a patient loses their SSI for any reason, the state is required to "promptly" determine whether they are eligible for AHCCCS under other programs (e.g., categorically eligible). Currently, CMS provides states anywhere from 20 to 45 days to conduct this redetermination, after which CMS will no longer pay the federal match rate for the person's health care services. According to the AHCCCS Administration, 50 percent of the people who are initially in jeopardy of losing their SSI are determined to continue to be eligible for SSI. In an effort to conserve resources, AHCCCS currently waits until CMS has determined that the person is not eligible for SSI and terminates the person's SSI coverage, at which point, AHCCCS will conduct the redetermination process. The state requests that CMS continue to provide the federal

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match rate until AHCCCS is able to complete its review (which will most likely exceed the 20- to 45-day window). **AzHHA supports this request.**

As you consider the AHCCCS Administration's renewed waiver request, I respectfully urge you to consider the consequences for Arizona's most vulnerable citizens, as well as the fact that a healthcare coalition has proposed funding continued coverage for low-income adults through a special healthcare assessment.

Thank you in advance for considering these comments on the state of Arizona's waiver and expenditure authority requests to implement Governor Brewer's Medicaid reform plan. Please feel free to contact me if you have any questions.

Sincerely,



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President and Chief Executive Officer

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