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10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
11 IN AND FOR THE COUNTY OF MARICOPA

12 ANTHONY FOGLIANO; GARY  
13 HINCHMAN; RICHARD LILLY;  
14 CATHERINE NICHOLS; AND  
MOUNTAIN PARK HEALTH CENTER,

15 Plaintiffs,

16 vs.

17 STATE OF ARIZONA; and TOM  
18 BETLACH, in his capacity as Director of  
the Arizona Health Care Cost Containment  
19 System,

20 Defendants.

) Civil No. 2011-010965

) **DEFENDANT TOM BETLACH'S**  
) **RESPONSE TO PLAINTIFFS' MOTION**  
) **FOR PRELIMINARY INJUNCTION**

) (Assigned to the Honorable Mark H. Brain)

21 Defendant Tom Betlach ("Director"), in his capacity as Director of the Arizona  
22 Health Care Cost Containment System ("AHCCCS"), responds in opposition to  
23 Plaintiffs' Motion for Preliminary Injunction and Memorandum in Support (the  
24 "Motion"). The Motion must be denied because Plaintiffs do not have standing and  
25 because Plaintiffs have failed to establish the requirements for injunctive relief.

26 This Response is supported by the following Memorandum of Points and  
27 Authorities, the record of this case, the declarations of Tom Betlach and Linda Skinner,  
28 submitted herewith, and any argument presented to this Court on August 3, 2011.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PRELIMINARY STATEMENT**

3 The State of Arizona is in the midst of one of the worst fiscal crises in its history.  
4 The Arizona Legislature has had to cut over \$2 billion in expenditures over the past two  
5 years and virtually every State program has suffered. Significant and dramatic cuts have  
6 been made to education, behavioral health, health care and other vital government  
7 services. Programs have been eliminated, salaries have been reduced and employees  
8 have lost their jobs. The cuts have been painful but necessary to preserve core  
9 government services. Plaintiffs seek injunctive relief to reverse AHCCCS Care  
10 enrollment freeze for the population referred to as "childless adults." This freeze,  
11 however, is necessary, to not only preserve other core government programs, but also to  
12 preserve the AHCCCS program itself.

13 Before closing the AHCCCS Care program to new enrollment, every reasonable  
14 and feasible alternative was implemented to reduce program expenditures. If the  
15 AHCCCS Care program were not closed to new enrollment, AHCCCS would be unable  
16 to operate the entire program within the funds established by law and appropriated by the  
17 Arizona Legislature for the State fiscal year beginning July 1, 2011, and ending June 30,  
18 2012 ("FY 2012"). This in turn would jeopardize federal funding for the entire AHCCCS  
19 program thereby causing the Medicaid program in Arizona to effectively end for all other  
20 covered Arizonans, including children, the disabled and pregnant women. Thus, the  
21 balance of hardships tips sharply in favor of the State and the injunction must be denied.

22 Additionally, Plaintiffs cannot prevail on the merits. There are no disputed  
23 material issues of fact regarding the AHCCCS plan, the legislative mandate AHCCCS is  
24 following, or the finite appropriations the Legislature has provided to AHCCCS in the FY  
25 2012 budget. The Director, however, vigorously disputes Plaintiffs' flawed interpretation  
26 of Proposition 204 and the Voter Protection Act, their misapplication of Arizona law  
27 pertaining to appropriations and separation of powers and the improper conclusions they  
28 draw from selected references to the 2000 voter publicity pamphlet and other external

1 sources prior to the passage of Proposition 204.

2 In an audacious effort to create a first lien on all general fund revenues, Plaintiffs  
3 are tacitly asking this Court to enter an order that would either (1) inappropriately compel  
4 the Legislature to modify other appropriations (such as for education, courts, school  
5 facilities, fire suppression, prisons, debt service, and public safety) to pay for the  
6 Proposition 204 Expansion Populationm,<sup>1</sup> without regard to whether such an  
7 appropriation would cut core government services or (2) require AHCCCS to expend all  
8 of its appropriated funds before the end of the fiscal year and consequently lose all  
9 federal matching funds for the entire AHCCCS program. For the reasons set forth below,  
10 Plaintiffs' request for a preliminary injunction must be denied.

## 11 II. BACKGROUND

12 The voters expanded the AHCCCS program in 2000 by passing Proposition 204.  
13 By the initiative's express terms, the voters only appropriated the Arizona Tobacco  
14 Litigation Settlement Fund to pay for the expansion in the AHCCCS program. While the  
15 initiative required that fund to be supplemented if necessary by "additional sources" of  
16 funds, including legislative appropriations, the drafters carefully avoided obligating the  
17 Legislature to appropriate undetermined amounts of general fund monies and left to the  
18 Legislature the determination of what funding was "available."

19 It is undisputed that Proposition 204 greatly expanded the number of people  
20 AHCCCS covers. One in four individuals receive AHCCCS benefits as a result of  
21 Proposition 204.<sup>2</sup> This accounts for 28.9 percent of the lives covered through the

22 <sup>1</sup> The eligibility level established under Proposition 204 includes "any person who has an  
23 income level that, at a minimum, is between zero and one hundred per cent of the federal  
24 poverty guidelines." A.R.S. § 36-2901.01(A). This expanded coverage, which includes  
25 various groups above the levels in effect prior to the initiative's passage, is referred to  
26 herein as the "Proposition 204 Expansion Population." The Proposition 204 Expansion  
27 Population includes: childless adults with incomes between zero and one hundred percent  
28 of the federal poverty level; parents with incomes from approximately twenty-three  
percent to one hundred percent of the federal poverty level; and individuals qualifying on  
the basis of Supplemental Security Income (SSI) with incomes between seventy six and  
one hundred percent of the federal poverty level. Prior to the passage of Proposition 204,  
parents and SSI individuals qualified at lower income levels.

<sup>2</sup> See AHCCCS Population Highlights, available at  
[http://www.azahccs.gov/reporting/Downloads/PopulationStatistics/2011/May/AHCCCS\\_](http://www.azahccs.gov/reporting/Downloads/PopulationStatistics/2011/May/AHCCCS_)  
(continued...)

1 AHCCCS program as of May 2011 (389,380 of 1,348,035 lives).<sup>3</sup> The additional  
2 expense has been substantial and consumes a significant percentage of the annual State  
3 budget. Recognizing that existing funding may be inadequate, the voters created a  
4 second fund (the Proposition 204 Protection Account) through Proposition 303 in the  
5 2002 general election to cover the expense of the expansion.<sup>4</sup> Collectively, these funds  
6 are referred to herein as the “Tobacco Funds.” Although the Tobacco Funds are the only  
7 specified and appropriated funding sources for the Proposition 204 Expansion  
8 Population, for FY 2012, they now account for only 6 percent of the non-federal funds  
9 appropriated for the AHCCCS program (\$148,579,200 of \$2,410,904,600), and only 17  
10 percent of the non-federal funds used to administer the Proposition 204 Expansion  
11 Population program (\$108,211,300 of \$628,387,600).

12 It is also undisputed that, for FY 2012, the Director has not been given the funds  
13 necessary to provide services to the entire Proposition 204 Expansion Population. For  
14 FY 2012, the Arizona Legislature appropriated AHCCCS \$1,363,735,000 from the State  
15 general fund and \$114,467,000 from other sources for the administration and operation of  
16 AHCCCS. The Legislature also granted AHCCCS expenditure authority for an  
17 additional \$4,408,635,600 of which \$4,182,092,700 are federal matching funds and  
18 \$108,211,300 of which is from the Tobacco Litigation Settlement Fund. Declaration of  
19 Tom Betlach (“Betlach Decl.”) at ¶¶ 3-4. This represents a \$1,580,385,500 reduction in  
20 funding from FY 2011. *Id.* at ¶ 5.

21 **A. Fiscal Year 2012 Budget**

22 In determining the amount of general fund revenue available to fund Proposition  
23 204 for FY 2012, the Arizona Legislature was confronted with multiple, competing  
24

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25 (...continued)  
Population\_Highlights\_May11.pdf (last visited July 8, 2011).

26 <sup>3</sup> *Id.*

27 <sup>4</sup> Arizona Secretary of State, *Ballot Propositions & Judicial Performance Review 387*  
28 (Nov. 5, 2002), available at  
[www.azsos.gov/election/2002/Info/pubpamphlet/english/prop303.pdf](http://www.azsos.gov/election/2002/Info/pubpamphlet/english/prop303.pdf) (last visited July  
17, 2011).

1 demands for state appropriations that far exceeded the general funds available. Although  
2 in previous years the Legislature appropriated supplemental funding beyond the Tobacco  
3 Funds to cover expenditures for Proposition 204, such funding was made at a time when  
4 revenues were substantially higher and therefore available for such use as determined by  
5 the Legislature. As late as 2007, the State of Arizona was en route to setting a fiscal  
6 record of \$9.5 billion in revenues.<sup>5</sup>

7 The financial situation in Arizona and the nation, however, took a substantial and  
8 dramatic turn for the worse following the record revenues in 2007. By 2010, the State  
9 was on the brink of fiscal collapse as a result of the worst economic recession since  
10 World War II.<sup>6</sup> Driven by a 34 percent loss in revenue and a projected 65 percent growth  
11 in Medicaid spending, state government faced a projected budget shortfall of \$1.4 billion  
12 in FY 2010 and \$3.2 billion in FY 2011.<sup>7</sup> The FY 2011 projected shortfall equaled 32  
13 percent of the projected operating budget for the entire year.<sup>8</sup>

14 The shift from comfortable budget surpluses to massive deficits did not occur  
15 overnight. Shortfalls began to emerge in FY 2008 and FY 2009, as the early effects of  
16 the current recession began to be felt. During these first years of budget problems, the  
17 State balanced its budget by drawing down the “rainy day” fund (\$710 million), sweeping  
18 dedicated funds (\$1.3 billion), rolling over K-12 payments and other payment deferrals  
19 into the next fiscal budget (\$887 million), utilizing temporary federal stimulus monies  
20 (\$2.2 billion), incurring lease purchase obligations (\$1.3 billion) and making substantial  
21 reductions to the overall budget (\$550 million).<sup>9</sup>

22  
23 <sup>5</sup> See *The Executive Budget Summary Fiscal Year 2011*,  
24 [http://www.ospb.state.az.us/documents/2010/FY2011\\_BudgetSummaryFINAL.pdf](http://www.ospb.state.az.us/documents/2010/FY2011_BudgetSummaryFINAL.pdf) (last  
visited June 18, 2011).

25 <sup>6</sup> Business Cycle Dating Committee, National Bureau of Economic Research,  
<http://www.nber.org/cycles/sept2010.html> (last visited June 18, 2011).

26 <sup>7</sup> See *The Executive Budget Summary Fiscal Year 2011*,  
27 [http://www.ospb.state.az.us/documents/2010/FY2011\\_BudgetSummaryFINAL.pdf](http://www.ospb.state.az.us/documents/2010/FY2011_BudgetSummaryFINAL.pdf) (last  
visited June 18, 2011).

28 <sup>8</sup> *Id.*

<sup>9</sup> *Id.*

1 To resolve the FY 2010 and FY 2011 budget deficits, the State took additional  
2 steps including, passing a temporary 1 cent sales tax (\$918 million, approved by the  
3 voters), providing other revenue enhancements (\$231 million), reducing the budget (\$761  
4 million), taking on additional debt (\$750 million), providing payment deferrals (\$450  
5 million), and sweeping additional dedicated funds (\$488 million).<sup>10</sup>

6 The fiscal crisis confronting Arizona has resulted in substantial cuts to core  
7 government services since peak expenditures in FY 2008. These include an 18 percent  
8 reduction in K-12 per pupil spending, a 25 percent cut in university student spending, a  
9 19 percent cut in community college spending, a 37 percent reduction in child care  
10 enrollees (18,000 children), a 48 percent reduction in the number of families on cash  
11 assistance (19,000 families), reduced state benefits for the seriously mentally ill, a  
12 reduction in AHCCCS provider rates, an elimination of most non-federally mandated  
13 Medicaid services, a reduction of the number of children in KidsCare (22,900 children), a  
14 12.9 percent reduction of the non-university state employee workforce, and an 18.9  
15 percent overall reduction of payroll costs.<sup>11</sup> Additionally, the State eliminated most  
16 general fund support for the Departments of Environmental Quality, Arts, Parks, Mines  
17 and Minerals, Water Resources, and Tourism.<sup>12</sup>

18 Despite these efforts, in January 2011, the State faced a projected FY 2011 deficit  
19 of \$763.6 million and a FY 2012 projected deficit of \$1.147 billion dollars. To resolve  
20 these deficits, the State reduced spending another \$1.2 billion, including a reduction of  
21 university support by 22 percent (\$198 million), community college support by 47  
22 percent (\$64 million) and employee benefits (\$50 million). In addition, the Legislature  
23 passed Senate Bill 1619 ("SB 1619"), which reduced the appropriation for the  
24 Proposition 204 Expansion Population because there were not funds available to pay for

25 <sup>10</sup> *State of Arizona FY 2011 Appropriations Report*, pp. BH2-BH3,  
26 <http://www.azleg.gov/jlbc/11app/FY2011AppropRpt.pdf> (last visited June 18, 2011).

27 <sup>11</sup> *Arizona Economy and Budget, FY 2011 and FY 2012*,  
[http://www.azahcccs.gov/reporting/Downloads/BudgetProposals/FY2012/ArizonaEcono  
myandBudget.pdf](http://www.azahcccs.gov/reporting/Downloads/BudgetProposals/FY2012/ArizonaEconomyandBudget.pdf) (last visited June 18, 2011).

28 <sup>12</sup> *Id.*

1 the program in its entirety given significant increases in this Population, current revenue  
2 projections, and other required expenditures necessary to operate state government.<sup>13</sup> SB  
3 1619, 2011 Ariz. Sess. Laws, 1st Reg. Sess., ch. 31. Even if a budget balance  
4 materializes, the State now owes \$2.2 billion in new debt, over \$1.1 billion in deferred  
5 payments and has \$553 million in non Medicaid “suspended” statutory programs. The  
6 Legislature will have to prioritize these fiscal pressures against the restoration of  
7 Medicaid funding.

8 **B. The AHCCCS Budget**

9 AHCCCS is the State agency that administers the federal Medicaid program in  
10 Arizona. Betlach Decl. at ¶ 12. Medicaid is jointly funded by the federal government  
11 and the State and, to participate in it, the State submits a “State Plan” to the Center for  
12 Medicare & Medicaid Services (“CMS”) in the United States Department of Health &  
13 Human Services. *Id.*; see also 42 C.F.R. § 430.0. Arizona’s State Plan is a  
14 comprehensive written statement describing the nature and scope of Arizona’s Medicaid  
15 program and includes assurances to CMS that the State will administer the program in  
16 conformity with federal requirements. Betlach Decl. at ¶ 12; see also 42 C.F.R. § 430.10.

17 Upon federal approval of the State Plan, the federal government provides a line of  
18 credit against which the State can draw federal funds equal to a percentage of the State’s  
19 expenditures for the Medicaid program. Betlach Decl. at ¶ 13; see also 42 C.F.R.  
20 § 430.30. The amount of these federal matching funds (“FMAP”) is calculated in  
21 accordance with a statutory formula based on the percentage of the State’s population  
22 that is below the Federal Poverty Level (“FPL”).<sup>14</sup> Betlach Decl. at ¶ 13; see also 42

23  
24 <sup>13</sup> Current budget projections suggest the State may realize revenue growth in excess of  
25 the adopted budget. However, cost drivers in the budget including K-12 enrollment,  
26 prisoner levels, and capitated populations may also be higher than projected levels. See  
27 *State of Arizona May 2011 Revenue Update*  
28 [www.azleg.gov/jlbc/PreliminaryMayRevenueUpdate.pdf](http://www.azleg.gov/jlbc/PreliminaryMayRevenueUpdate.pdf) (last visited June 18, 2011).

<sup>14</sup> However, the percentage varies depending on (1) whether the expenditure is for  
administrative costs or the cost of providing services, (2) what type of administrative or  
service cost the expenditure is, and (3) what the eligibility status of the person receiving  
the services. Betlach Decl. at ¶ 13. And for various periods of time and for various other  
purposes, the Medicaid Act has allowed for increases to the base percentage. *Id.*

1 C.F.R. § 433.10. In general, the federal government has historically contributed about 65  
2 percent of the cost of Arizona’s program. This federal financial participation (“FFP”) is  
3 only available to match expenditures of State and local funds that are incurred in a  
4 manner consistent with the State Plan. Betlach Decl. at ¶ 13. In other words, unless there  
5 are State and local funds available to be spent on the program, federal funds are not  
6 available. The program cannot be funded using exclusively federal funds. *Id.*

7 As stated, for FY 2012, the Arizona Legislature reduced AHCCCS’ appropriation  
8 by \$1,580,385,500, by appropriating AHCCCS \$1,363,735 from the general fund and  
9 \$114,467,000 from other sources. *Id.* at ¶¶ 3-5. But AHCCCS does not have a fungible  
10 budget or unlimited discretion on how to use these appropriated funds. Consistent with  
11 A.R.S. § 35-173(B), prior to making any expenditure from the appropriation for FY 2012,  
12 AHCCCS prepared and submitted to the Arizona Department of Administration an  
13 allotment schedule based on AHCCCS’ best estimate of the annual requirements of the  
14 AHCCCS program that distributes the total appropriation and expenditure authority to  
15 cover the entire State fiscal year’s operations. *Id.* at ¶ 6. Pursuant to A.R.S. § 35-173(C),  
16 AHCCCS plans to request authority from the Arizona Department of Administration to  
17 transfer spending authority from one or more of the appropriations for AHCCCS  
18 programs to other AHCCCS programs. *Id.* at ¶ 7.

19 The AHCCCS program is also subject to the proposed reductions in the  
20 Governor’s Medicaid Reform Plan *Id.* at ¶ 9. Those reductions include elimination of  
21 coverage for non-qualified aliens (estimated to reduce expenditures from the general fund  
22 by \$20 million for FY 2011) and increases in copayments for services that eligible  
23 individuals would be required to contribute toward the cost of their care (estimated to  
24 reduce expenditures from the general fund by \$2.7 million for FY 2011).<sup>15</sup> *Id.*

25 In addition to the funds appropriated by the Legislature to AHCCCS, the  
26 Legislature makes appropriations to the Arizona Department of Health Services and the

27 <sup>15</sup> Approval from the federal government is required before eliminating coverage for  
28 non-qualified aliens or increasing mandatory copayments. That approval, if granted, is  
not expected to be effective sooner than October 1, 2011. *Id.*



1 Arizona Department of Economic Security for the operation of the AHCCCS program.  
2 *Id.* at ¶ 11. Each of those agencies contracts with AHCCCS to act as a managed care  
3 entity for persons with behavioral health needs and persons with developmental  
4 disabilities respectively. Both agencies transfer funds to AHCCCS so that AHCCCS can  
5 make capitation payments (essentially insurance premium payments) to both agencies  
6 and claim federal matching funds for those payments. However, absent an act of the  
7 Legislature, AHCCCS cannot use the transferred funds for any other purpose. *Id.*

8 There are three primary factors that drive the cost of AHCCCS: (1) eligibility  
9 (who the system covers); (2) the scope of benefits (the health care services the system  
10 provides); and, (3) provider reimbursement rates (what the system pays health care  
11 providers). *Id.* at ¶ 14. To establish a program that can be operated within the  
12 appropriations made by the Arizona Legislature and, before a decision was made to  
13 prohibit new enrollment for persons otherwise eligible for AHCCCS Care, AHCCCS  
14 implemented and continues to implement all other feasible reductions in each of these  
15 areas. *Id.* But the extent of reductions in each of these areas is constrained by practical  
16 considerations and legal requirements. *Id.*

17 **1. Optional services have been limited or eliminated**

18 The federal government limits the State's ability to reduce the scope of covered  
19 services. *Id.* at ¶ 16; *see also* 42 C.F.R. § 440.210. As a condition of receiving federal  
20 funds, every state must cover certain services including: inpatient and outpatient hospital  
21 services, physician services, services provided by federally qualified health clinics and  
22 rural health clinics, laboratory and imaging services, nursing facility services, services to  
23 persons under twenty-one, family planning services, the services of a nurse mid-wife, the  
24 services of a nurse practitioner, and services of a free-standing birth center. Betlach  
25 Decl. at ¶ 16. Each service must be sufficient in amount, scope and duration to meet its  
26 intended purpose. *Id.*; *see also* 42 C.F.R. § 440.230.

27 If the State eliminates a service which is required for federal funding, or limits  
28 services beyond what the federal government considers adequate, then the federal

1 government will not provide financial support for the AHCCCS program. Betlach Decl.  
2 at ¶ 17; *see also* 42 C.F.R. § 430.35. If federal financial support becomes unavailable,  
3 the Director is required by State law to suspend the operation of AHCCCS and to inform  
4 each provider of health care of that fact. Betlach Decl. at ¶ 17; *see also* A.R.S. § 36-  
5 2919. During the suspension, AHCCCS is prohibited from providing any services to any  
6 AHCCCS eligible person. Betlach Decl. at ¶ 17.

7 There are also practical limitations on the State's ability to limit, reduce or  
8 eliminate covered services. *Id.* at ¶ 18. Under the Medicaid program, there are a number  
9 of services that the State can opt to include in the State Plan and the cost of those services  
10 are eligible for federal matching funds. *Id.*; *see also* 42 C.F.R. § 440.225. These optional  
11 services include prescription drugs, dental services, home health services, personal care  
12 services, hospice care, and physical therapy. Betlach Decl. at ¶ 18.

13 Working within these constraints, AHCCCS plans to implement changes to the  
14 scope of covered services effective October 1, 2011, that are expected to reduce  
15 expenditures from the general fund by \$40 million for FY 2012. *Id.* at ¶ 15. Those  
16 changes include limiting the number of covered inpatient hospital days to 25 days per  
17 year, limiting the number of covered hospital emergency department visits to 12 per year  
18 or excluding coverage for the non-emergency use of the emergency room, and possibly  
19 limiting the number of respite hours per year provided to persons in home and  
20 community-based setting who regularly receive personal care services provided by family  
21 members or friends. *Id.* AHCCCS has implemented or is implementing all practical and  
22 fiscally responsible limitations on services that it can consistent with State and federal  
23 law. *Id.* at ¶ 19.

24 **2. Reimbursement to providers has been reduced**

25 Likewise, there are federally imposed limitations on the State's ability to reduce  
26 provider reimbursement rates. *Id.* at ¶ 21. The Medicaid Act requires that provider  
27 reimbursement rates be sufficient to enlist enough providers so that services are available  
28 to AHCCCS eligible persons to the same extent that they are available to the general

1 population in the same geographic area. *Id.*; *see also* 42 C.F.R. § 447.204. Federal  
2 courts have interpreted the Medicaid Act to require that reimbursement rates established  
3 by the State bear a reasonable relationship to efficient and economical costs of providing  
4 quality services. *See Indep. Living Ctr. of S. Cal., Inc. v. Maxwell-Jolly*, 572 F.3d 644,  
5 651 (9th Cir. 2009). AHCCCS must submit changes to its reimbursement methodologies  
6 to the federal government for review and approval under these standards. Betlach Decl.  
7 at ¶ 21.

8 If the State reduces health care provider reimbursement rates in a manner  
9 inconsistent with the methodologies in an approved State Plan, then the federal  
10 government will not provide federal financial support for the AHCCCS program. *Id.* at  
11 ¶ 22. If federal financial support becomes unavailable for any reason, the Director is  
12 required by State law to suspend operation of AHCCCS and to inform each provider of  
13 health care of that fact. *Id.* During the suspension, AHCCCS is prohibited from  
14 providing *any* services to any AHCCCS eligible person. *Id.*

15 There are also practical limits to the State's ability to reduce provider  
16 reimbursement rates. *Id.* at ¶ 23. Health care providers are not required to render  
17 services to individual eligible for AHCCCS. *Id.* Simple market forces dictate that health  
18 care professionals will simply decline to provide care to AHCCCS eligible persons if  
19 reimbursement rates are reduced too far. *Id.* In addition, several states including Arizona  
20 have been sued by providers and eligible individuals seeking to enjoin provider rate  
21 reimbursement reductions. *Id.*

22 Working within these limitations, AHCCCS is implementing reductions to health  
23 care provider reimbursement rates effective October 1, 2011, that are expected to reduce  
24 expenditures from the general fund by \$95 million for the State fiscal year ending June  
25 30, 2012. *Id.* at ¶ 20. Those reductions include a general five percent reduction to  
26 virtually all provider payments, reductions in capitation payments made to managed care  
27 organizations that contract with AHCCCS, reductions in reimbursement for certain  
28 prescription drugs dispensed by federally qualified health centers and rural health centers

1 to the actual acquisition cost plus a dispensing fee, and reductions in payments for  
2 inpatient hospital admissions with extraordinary operating costs per day. *Id.* AHCCCS  
3 has implemented or is implementing all practical and fiscally responsible reductions in  
4 health care provider reimbursement rates consistent with current market conditions and  
5 State and federal law. *Id.* at ¶ 24.

6 **3. The ability to limit or reduce eligibility is constrained by federal**  
7 **law**

8 The remaining cost driver is eligibility. AHCCCS has already taken action to  
9 reduce program expenditures by restricting eligibility to the extent permitted by State and  
10 federal law. *Id.* at ¶ 25. As of May 1, 2011, AHCCCS closed the Medical Expense  
11 Deduction program to new enrollment which effectively eliminates the program on  
12 October 1, 2011. *Id.*; *see also* A.A.C.R9-22-1442. This program – subject to the freeze –  
13 provides health care coverage to persons with income over 100 percent of the federal  
14 poverty level but who have incurred personal financial responsibility for substantial  
15 medical costs. *Betlach Decl.* at ¶ 25; *see also* A.R.S. § 36-2901.04. Freezing the  
16 Medical Expense Deduction program is estimated to reduce expenditures from the  
17 general fund by \$70 million for the State fiscal year ending June 30, 2012. *Betlach Decl.*  
18 at ¶ 25.

19 But, like the other drivers, there are federally imposed limitations on the State's  
20 ability to eliminate eligibility groups or to impose more restrictive eligibility  
21 requirements. *Id.* at ¶ 26. Under the Medicaid Act, there are certain eligibility categories  
22 that the State must cover under its State Plan as a condition of receiving any federal  
23 financial participation for the cost of care for those persons. *Id.*; *see also* 42 U.S.C.  
24 § 1396a(a)(10)(i)(IV). Some of these categories have income limits that are above 100  
25 percent of the federal poverty level, including pregnant women (140 percent of FPL) and  
26 children under the age of six (133 percent of FPL). *Betlach Decl.* at ¶ 26. If the State  
27 were to eliminate or reduce the income limit for any of the mandatory eligibility groups,  
28 then the federal government will not provide federal financial support for the AHCCCS

1 program, triggering suspension of the AHCCCS program. *Id.* at ¶ 27.

2 The Medicaid Act also permits states to include eligible persons in optional  
3 eligibility categories or to cover mandatory eligibility categories at income levels above  
4 federal minimums. *Id.* at ¶ 28.; *see also* 42 U.S.C. § 1396a(a)(10)(ii). If included in an  
5 approved State Plan, the cost of providing care to these persons is also eligible for federal  
6 contributions toward those costs. Betlach Decl. at ¶ 28. Arizona has elected in its  
7 approved State Plan to cover a number of optional groups with income limits above 100  
8 percent of the federal poverty level. *Id.*

9 Even with respect to groups that are otherwise considered optional, current federal  
10 law prohibits the State from restricting eligibility. *Id.* at ¶ 29. The American Recovery  
11 and Reinvestment Act, prohibits States from imposing more restrictive eligibility  
12 requirements than the State had in place under its State Plan as of July 1, 2008, as a  
13 condition of receiving an increase in the percentage of federal financial participation for  
14 the State's Medicaid program. *Id.* In addition, the Patient Protection and Affordable  
15 Care Act prohibit States from imposing more restrictive eligibility requirements than the  
16 State had in place under its State Plan as of March 23, 2010, as a condition of receiving  
17 *any* federal financial support for the State's Medicaid program. *Id.*; *see also* 42 U.S.C.  
18 § 1396a(gg). If the State imposes more restrictive eligibility standards than were in place  
19 under the approved State Plan as of March 23, 2010, then, again, then the federal  
20 government will not provide federal financial support for the AHCCCS program,  
21 triggering suspension of the program. Betlach Decl. at ¶ 30.

22 By letter dated February 15, 2011, the Secretary of the United States Department  
23 of Health & Human Services informed AHCCCS that neither the AHCCCS Care nor  
24 MED eligibility categories were subject to the prohibition on more restrictive eligibility  
25 standards because coverage for those populations are not included in Arizona's State  
26 Plan. *Id.* at ¶ 31. Federal financial participation for the cost of covering those two groups  
27 derives from a separate agreement entered into under section 1115 of the Social Security  
28 Act – an agreement that is also referred to as the waiver agreement or the demonstration

