AHCCCS
Arizona Health Care Cost Containment System

Douglas A. Ducey, Governor
Thomas J. Betlach, Director

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Subject: Response to Lift Phoenix Health Plan Enrollment Cap

Dear Messrs. Cowley and Ballantyne:

Thank you for promptly responding to our December 12 letter asking Phoenix Health Plan (PHP) to provide additional information supporting its request that the AHCCCS Administration lift the enrollment cap placed on PHP effective October 1, 2013 pursuant to contract YH14-0001. In its reply dated January 2, 2015, PHP maintains that "it is in the best interests of the State to lift the cap on PHP enrollment due to extraordinary and unforeseen circumstances including (i) the trend of purchasing AHCCCS-contracted plans by parties that either lack experience, did not perform well in the RFP, and/or did not participate at all in the RFP; (ii) performance issues with contracted plans that, if continued or exacerbated, may result in plans choosing to leave the Arizona marketplace, contract termination, or other enforcement actions by AHCCCS; and (iii) an increasing state budget shortfall that can be abated without cutting a single service or increasing a single charge to Arizona taxpayers by simply allowing PHP to increase its enrollment."

The Agency greatly appreciates PHP's extensive reply, its longstanding partnership with the AHCCCS Program, and PHP's rich experience and presence in Arizona. However, after thorough and thoughtful review of PHP's request, the AHCCCS Administration has determined that PHP fails to satisfy the contractual provisions which authorize AHCCCS to lift the enrollment cap. As stated in the AHCCCS March 29, 2013 Notification of Capped Contract to Ms. Novick, Section E Contract Terms and Conditions provides AHCCCS with the discretion to lift an enrollment cap in three very limited circumstances: 1) Another Contractor is terminated and increased member capacity is needed, or (2) Legislative action creates and unforeseen increase in the overall AHCCCS population, or (3) Extraordinary and unforeseen circumstances make such an action necessary and in the best interest of the State.

No AHCCCS Contractor has been terminated, and legislative action has not created an unforeseen increase in the overall AHCCCS population. Therefore, no basis exists under either (1) or (2) above to consider PHP's request to remove the enrollment cap. It is the third requirement that PHP relies upon to justify termination of its capped enrollment such that enrollment in PHP is unrestricted: In both letters sent to the AHCCCS Administration regarding this subject, PHP asserts that "extraordinary and unforeseen circumstances exist such that it is in the best interest of the State to lift the cap on enrollment in PHP."

In our review of the justification provided by PHP in its January 2, 2015 correspondence, the AHCCCS Administration applied the following three part test:

1. Has PHP identified both an extraordinary and unforeseen circumstance?
2. If so, is it reasonably likely that the extraordinary and unforeseen circumstance will have a significant negative impact to the AHCCCS system?
3. Is uncapping PHP both in the best interest of the State and also necessary to materially mitigate the significant adverse impact of the extraordinary and unforeseen circumstance to the AHCCCS system?

PHP has identified three circumstances that it asserts are extraordinary and unforeseen circumstances warranting removal of the enrollment cap:

1. The trend of third parties purchasing AHCCCS MCO's after an award.
2. Performance issues with AHCCCS MCO's.
3. The Arizona State budget shortfall.

The AHCCCS Administration has concluded that none of the three justifications presented by PHP supports uncapping the PHP contract. This determination is consistent with the aforementioned contract terms and conditions.

Regarding the first issue outlined by PHP, the trend of third parties purchasing AHCCCS MCO's after the acute care contract award is neither extraordinary nor unforeseeable. In fact, PHP itself has been the subject of multiple changes in corporate ownership over the past several years by entities with little Medicaid Managed Care experience and no experience with Medicaid in Arizona. Consolidation of the health care industry has been a notable feature of the health care landscape for many years; clearly, this trend has accelerated in recent years. Subsequent to the acute care contract awards in 2013, Dallas-based Tenet Healthcare Corp. purchased Vanguard Health Systems, Inc. (which operates Abrazo Health Care and PHP) in one of the nation's top three health system acquisitions since 2013. AHCCCS is experienced in managing through ownership transitions and subsequent personnel changes; for example, although PHP underscores its experience with the AHCCCS Program and its institutional knowledge, personnel changes at PHP have been extensive following Tenet's acquisition of Vanguard, with departures of key PHP staff who possessed critical institutional knowledge and vital AHCCCS experience. The trend of purchasing AHCCCS-contracted plans by third parties that "lack AHCCCS experience, did not perform well in the RFP, and/or did not participate at all in the RFP," as characterized by PHP, is not unforeseen and is not extraordinary. Furthermore, AHCCCS has established processes in place to ensure a successful transition of contractors, including review of ownership transitions and options for increased monitoring. These processes are designed to prevent negative impact to the AHCCCS system. Therefore, PHP's position fails to satisfy the aforementioned contractual requirements for AHCCCS to consider lifting the cap on enrollment.

Additionally, PHP contends that performance issues with AHCCCS plans, "if continued or exacerbated," may ultimately result in contract termination, exodus from the Arizona marketplace or other enforcement action. This, PHP argues, represents extraordinary and unforeseen circumstances such that the cap on PHP enrollment must be lifted. PHP's reasoning fails to meet the contractual provisions authorizing AHCCCS to consider removing the enrollment restriction. The performance issues identified by PHP are not extraordinary. AHCCCS continuously monitors the performance of its contractors and takes appropriate action when necessary to ensure compliance. Significantly, AHCCCS' oversight of its health plans is fundamental to the Agency's continuing emphasis on contract compliance and improved health care operations. The administrative actions referenced by PHP, which are available on the Agency's website as part of its transparency initiatives, represent a normal outgrowth of AHCCCS' expanding focus in this strategic area. Furthermore, the performance actions referenced by PHP are not inconsistent with historical contract compliance actions and are part of a measured and graduated response to achieving collaborative contract compliance. Despite PHP's recurring speculation of possible contract termination, disruption, or lack of capacity, the referenced performance actions are not anticipated to lead to significant adverse impacts such as termination of managed care contracts or plans choosing to leave the Arizona marketplace. To the contrary, AHCCCS has noted improvement in health plan performance in response to the administrative actions. Thus, the presence of administrative actions is neither unforeseen nor extraordinary and therefore does not meet the contractual requirements for lifting the enrollment cap.

Regarding PHP's fiscal argument, PHP states that the Arizona budget shortfall is both extraordinary and unforeseen and that increasing enrollment in PHP "will favorably affect the current State budget deficit" and "will contribute to the reduction of Arizona's $1.5 billion budget deficit as enrollment in PHP increases." While the State budget shortfall may have been unforeseen, it is not extraordinary in that Arizona recently experienced and weathered a much more significant shortfall. Because the shortfall does not rise to the level of extraordinary, it fails to satisfy the contractual provisions for consideration of lifting the cap. In addition, any potential reduction in program expenses that might result from uncapping PHP is purely speculative, and, under the best of circumstances, such reduction would have an insignificant impact on that shortfall. Although PHP asserts that its rates are 5% below those of other plans, this figure is simply an artifact of the lower acuity of AHCCCS members assigned to PHP in the past. When health acuity is eliminated from the equation, a prerequisite to an equitable comparison of rates among plans, the practical savings is insignificant (approximately 1.5%, applied only to the small population of members in Maricopa who, if the cap were lifted, would be assigned to PHP instead of another plan) In reality, lifting the cap would simply shift health acuity among plans, ultimately yielding a virtually budget neutral result across the system. Thus, while the shortfall may have been unforeseen, it was not extraordinary. Regardless, lifting the cap on PHP's enrollment does not materially mitigate the adverse impact of the budget shortfall. Therefore, PHP has failed to establish that the budget shortfall satisfies the required elements for AHCCCS to consider removing the enrollment restrictions.

The AHCCCS Administration values the many years of partnership and collaboration with PHP. However, the Administration cannot, consistent with contract requirements, remove the enrollment cap in response to PHP's request. The grounds asserted by PHP for ending the cap fail to satisfy the very limited circumstances which authorize the Agency to remove the enrollment restrictions. The trend of third parties purchasing AHCCCS MCO's after an award is neither extraordinary nor unforeseen. Likewise, performance issues associated with other AHCCCS contractors are not extraordinary and are also not unforeseen. Arizona's budget shortfall, while arguably unforeseen, is not extraordinary. Therefore, none of the circumstances presented by PHP satisfy the threshold requirement of being both extraordinary and unforeseen. Nor do the justifications cited by PHP satisfy the remaining requirements that removing the cap is both necessary to mitigate the significant adverse impacts and is also in the best interest of the State. In light of PHP's failure to meet these provisions, the AHCCCS Administration will not be soliciting public comments.

Sincerely,

Thomas J. Betlach
Director

cc. Michael Veit