

Janice K. Brewer, Governor
Thomas J. Betlach, Director

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Our first care is your health care
ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

October 25, 2010

Cynthia Mann, Director
Center for Medicaid and State Operations
Centers for Medicare and Medicaid Services
Mail Stop: S2-26-12
7500 Security Boulevard
Baltimore, Maryland 21244-1850

Re: Benefit Changes Exemption for Services at IHS and 638 facilities

Dear Ms. Mann:

As you know, Arizona has been faced with one of the largest fiscal deficits in the nation. During this time, the Medicaid program has also grown at historical rates. The Arizona Health Care Cost Containment System (AHCCCS) has had to take significant steps to contain the skyrocketing costs of the Medicaid program within the constraints of federal maintenance of effort requirements. As a result, provider rates have been reduced, general appropriations of graduate medical education programs were completely eliminated, enrollment into the KidsCare program was capped, and AHCCCS staff was reduced by over 30%. In addition, many optional benefits were eliminated for all adults in the Medicaid program. Elimination of these optional benefits was approved on August 11, 2010, via State Plan Amendment (SPA) #10-006.

Consultation with tribal governments, Indian Health Service (IHS), tribal health programs operated under P.L. 93-638 (referred to as 638 facilities), and urban Indian health programs was conducted on multiple occasions to discuss these benefit reductions. During these consultation meetings, tribal representatives expressed concerns regarding the implementation of these benefit reductions since Arizona would receive no State savings. Tribes also expressed concerns that the benefit changes would have a greater impact on American Indian (AI) members and the Indian health system since AIs have a disproportionately higher rate of diabetes and other chronic conditions. In response to these concerns, AHCCCS requested to exempt services received through the IHS and 638 facilities from the benefit cuts since these services are paid at 100% Federal match.

In June 2010, CMS recommended that AHCCCS include language in the Special Terms and Conditions of its Demonstration Project that members who receive services through IHS and 638s could be exempt from the benefit limits otherwise imposed by SPA #10-006. Later in August, CMS staff told AHCCCS that any change to the Special Terms and Conditions regarding the expanded scope of services in IHS and 638 facilities would have to also provide that: (1) these expanded benefits be extended to non-Indians who receive services through IHS and 638s; (2) AHCCCS could not draw down 100% FMAP for services provided to non-Indians; and (3) the State (and facility) must have a system in place to identify non-Indian service charges.

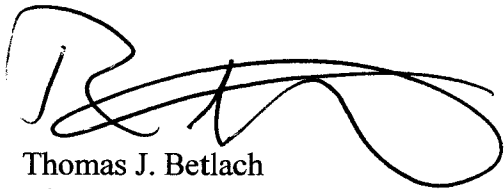
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Federal law, specifically 42 USC §1396d(b) and 42 CFR §433.10(c)(2), clearly provide authority for the State's right to claim 100% FMAP regardless of whether the Medicaid recipient is American Indian. The sole criterion for a State's ability to claim 100% FMAP is that the service be provided through IHS or a 638 facility. While CMS has expressed concern regarding compliance with civil rights law if expanded services are made available through IHS and 638 facilities, the degree of federal financial participation is irrelevant to any such concern. Since both AIs and non-AIs would receive the same services at IHS and 638 facilities, there would be no differential treatment.

Arizona is not in a position to pay any portion of the federal obligation for services rendered through IHS and 638 facilities. Should CMS require this as a condition of exempting the benefit limits, Arizona has no choice but to apply the benefit limits to services received at IHS and 638 facilities. We appreciate the time and effort that you and your staff have spent on this issue to date and we hope to develop an approach that would be acceptable for both CMS and Arizona. However, if this is the final position of CMS, we respectfully request a written response to this letter stating the CMS position.

Do not hesitate to contact me if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Betlach', with a large, sweeping flourish extending to the right.

Thomas J. Betlach
Director

Attachment

cc: Jessica Schubel
Cheryl Young