

**Janice K. Brewer, Governor**  
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*Our first care is your health care*  
ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

December 11, 2009

Cindy Mann  
Director, Center for Medicaid State and Operations  
Centers for Medicare and Medicaid Services  
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Dear Ms. Mann:

Title I, Section 104 of the Children's Health Insurance Program Reauthorization Act (CHIPRA) provides for a performance bonus payment to states that meet five of eight enrollment and retention provisions for children. Details regarding these provisions can be found in CHIPRA Title I, Section 104 amending Section 2105(a) of the Act adding new paragraph (4).

On September 29, 2009, the Arizona Health Care Cost Containment System (AHCCCS), Arizona's single state Medicaid agency, submitted its application for a performance bonus payment along with documentation demonstrating the State had met five of the eight criteria qualifying Arizona for a bonus payment for 2009. AHCCCS also completed the required Bonus Payment (BP) template on November 6, 2009. In a December 9, 2009 call scheduled by the Centers for Medicare and Medicaid Services (CMS), the State was informed that Arizona only met three of the eight criteria. We respectfully submit this letter to contest those findings and request an official review.

The five criteria that Arizona contends it meets include: (1) liberalization of asset requirements; (2) elimination of in-person interview; (3) use of joint application for Medicaid and CHIP; (4) automatic renewal; and (5) Express Lane eligibility. CMS found that the two deficient requirements were automatic renewal and Express Lane. Our disagreement with those conclusions follows.

#### **AHCCCS meets Automatic Renewal (Use of Administrative Renewal)**

CHIPRA Title I, Section 104 amending the Social Security Act Section 2105(a) to add paragraph (4)(E) provides:

“(i) IN GENERAL.—The State provides, in the case of renewal of a child's eligibility for medical assistance under title XIX or child health assistance under this title, a pre-printed form completed by the State based on the information available to the State and notice to the parent or caretaker relative of the child that eligibility of the child will be renewed and continued based on such information unless the State is provided other information.

Nothing in this clause shall be construed as preventing a State from verifying, through electronic and other means, the information so provided.

(ii) SATISFACTION THROUGH DEMONSTRATED USE OF EX PARTE PROCESS.—A State shall be treated as satisfying the requirement of clause (i) if renewal of eligibility of children under title XIX or this title is determined without any requirement for an in-person interview . . .”

Thus, CHIPRA allows the automatic renewal criteria to be met by *either* use of a pre-printed form *or* no requirement for an in-person interview for renewal of eligibility since the statute states “a State shall be treated as satisfying the requirement of clause (i)” if it meets the requirements of clause (ii). As provided in both the September 29 initial notice and the November 6 completed BP template, AHCCCS explained that since the State does not require an in-person interview for renewal of eligibility of children, Arizona is deemed to satisfy this requirement.

The State’s position was further explained in two separate calls held with CMS staff on December 2 and December 9. During these calls, the State first learned that (i) and (ii) of this provision were being read together rather than as an either/or construction, which is the proper reading of the statute. When AHCCCS pointed out this error, CMS staff acknowledged this as a possible reading.

Typically, it is easy to argue different interpretations of a federal statute. In this case, however, there is no other way to read this provision but as an either/or proposition. Accordingly, the fact that AHCCCS does not require an in-person interview for renewal satisfies the automatic renewal criteria. While this may not be the outcome that CMS believes is appropriate, it is the outcome allowed under the letter of the law.

### **AHCCCS meets Express Lane Eligibility**

CHIPRA Title I, Section 104 amends the Social Security Act Section 2105(a) to add paragraph (4)(G), which includes Express Lane as one of the eight criteria that can be met for a state to receive a bonus payment. Title II, Section 203 of CHIPRA provides additional detail on what constitutes use of an Express Lane agency (ELA). This section amends Section 1902(e) adding paragraph (13)(A)(i), which provides:

“At the option of the State, the State plan may provide that in determining eligibility under this title for a child (as defined in subparagraph (G)), the State may rely on a finding made within a reasonable period (as determined by the State) from an Express Lane agency as defined in subparagraph (F)) when it determines whether a child satisfies one or more components of eligibility for medical assistance under this title.”

Subparagraph (F)(i) of this Section defines an Express Lane agency as a public agency that is determined by the State Medicaid Agency “to be capable of making the determinations of one *or*

*more* eligibility requirements” and “is identified in the State Medicaid plan.” Subparagraph (F)(ii)(I)(aa) goes on to say that such a public agency includes “[a] public agency that determines eligibility for assistance under . . . [t]he temporary assistance for needy families program . . . .”

As provided in the State’s submittal, AHCCCS has worked in coordination with the Arizona Department of Economic Security (DES) and its office of Family Assistance Administration (FAA). This public agency makes determinations for the Temporary Assistance for Needy Families (TANF) benefit. The TANF eligibility determination includes components of Medicaid and CHIP eligibility, such as income, residency, household composition, social security number, age and deprivation. The Medicaid agency then accepts those determinations as made by DES/FAA for both Title XIX and Title XXI purposes and conducts a separate citizenship verification, since the Medicaid citizenship requirements are more stringent than those of the TANF program. In the case where the DES/FAA determines a child is eligible for the CHIP program, the Medicaid agency verifies that applicant’s desire to be on the CHIP program for which there is a premium requirement in Arizona. Thus, a child who walks in to the DES/FAA office to be screened for TANF will also be screened and determined for Medicaid or CHIP. This process has been in place for many years in Arizona.

On a call held September 23, 2009, CMS recognized this process and that Arizona’s authority for conducting this de facto Express Lane process can be found in its State Plan under Supplement 12 to Attachment 2.6-A, page 1. As such, DES/FAA has been operating as a de facto Express Lane agency. Arizona submitted a State Plan Amendment per CMS guidance to officially title the process as Express Lane under CHIPRA.

In the call held on December 9, however, CMS staff explained to AHCCCS that this does not meet the requirements under CHIPRA because there was nothing new added to our current process. CMS staff explained to AHCCCS that Arizona would meet the Express Lane criteria under CHIPRA if DES/FAA and AHCCCS had been operating independently and then recently, the two agencies entered into an agreement that would result in the *same* process we currently use now – that is allow the Medicaid agency to accept the TANF findings for purposes of Medicaid eligibility.

We find absolutely no support for such a position in the language of CHIPRA. The reason CMS provided for its interpretation of the statute was that several state Medicaid agencies were already linked to their TANF agency and qualifying several states under this requirement simply could not have been the intent of Congress. What is the logic in establishing a policy where one state is determined to meet the criteria if they were previously inefficient and changed their system to the same structure deployed in Arizona? That is not an equitable, fair policy and is based solely on CMS interpretation.

The fact remains that CHIPRA is written to include TANF agencies as possible ELAs. There is nothing anywhere in the statute that requires a new process or change in existing processes for those states that already meet this criterion. Whether CMS staff disagree with the potential

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outcome of the plain reading of the statute is irrelevant. Certainly, CMS has the authority to implement guiding regulations, but it is clear that the intent of Congress was to include TANF agencies as part of the Express Lane process.

### **Conclusion**

CMS' decision to not qualify Arizona for bonus payments is based purely on CMS' interpretation of CHIPRA language that would yield the outcome it believes should have been the intent of Congress. We disagree with such a reading and believe that the letter of the law and intent of Congress is clear and should prevail. Therefore, Arizona respectfully requests a review of CMS' decision with regards to automatic renewal and Express Lane eligibility that is in line with the plain language of the law.

As you know, Arizona is facing one of the worst budget deficits in the country. Programs like CHIP are under review as the Arizona Legislature discusses its options to address this financial crisis. Ultimately, a decision to not qualify Arizona for bonus payments under CHIPRA could cost the State an estimated \$31.7 million over 3 years. This funding would go a long way in the State's efforts at retaining Arizona's CHIP program upon which over 46,000 Arizona children rely. That is the intent of Congress in creating the bonus payment – to financially assist those states that have been at the forefront of increasing efficiencies and streamlining enrollment and retention policies.

Thank you for the opportunity to provide more information on this matter. I would hope that Arizona and CMS continue our dialogue on this issue before a final determination is made. I appreciate your attention to this issue.

Sincerely,



Thomas J. Betlach  
Director

cc: Steve Rubio  
Tonya Moore  
Gloria Nagle  
Cheryl Young  
Susan Ruiz  
Richard Strauss  
Anne Kohler