



THE SECRETARY OF HEALTH AND HUMAN SERVICES

WASHINGTON, D.C. 20201

February 15, 2011

The Honorable Janice Brewer
Governor of Arizona
Phoenix, AZ 85007

Dear Governor Brewer:

Thank you for responding to the February 3, 2011 letter I sent to the nation's governors outlining the commitment of the Department of Health and Human Services (HHS) to partner with states as they confront very difficult fiscal circumstances. I welcome your commitment to work together to help achieve both short-term savings and the long-term sustainability of the Medicaid program while also ensuring high-quality care to the people of Arizona. And I look forward to speaking with you personally to address these and other issues.

Over the recent months, HHS has worked to provide the State of Arizona with flexibility in administering and reducing the costs of your Medicaid and Children's Health Insurance (CHIP) programs. In the past twelve months, the Centers for Medicare & Medicaid Services (CMS) has approved five amendment requests to Arizona's section 1115 Medicaid demonstration and eight state plan amendments, including:

- Eliminating or limiting the following optional Medicaid state plan benefits for adults:
 - Eliminating dental services including preventive dental care, restorations including crowns and fillings, extractions, pulpotomies, root canals and dentures;
 - Eliminating podiatrist services;
 - Eliminating coverage of transplants including pancreas-only transplants; pancreas after kidney transplants; lung transplants; Allogeneic unrelated hemopoetic stem cell transplants; heart transplants for non-ischemic cardiomyopathy, liver transplants for diagnosis of Hepatitis C, and transplants of the intestines;
 - Limiting well visits and physical exams;
 - Limiting prosthetics and orthotics coverage;
 - Limiting dental services prior to organ transplantation and treatment of certain cancers;
 - Limiting hospice services; and
 - Limiting outpatient occupational and speech therapy.

- Revising the Graduate and Indirect Medical Education pool amounts and financing;
- Permitting inpatient and outpatient hospital reimbursement rate freezes;
- Including Community Transition Services as a Home and Community Based Service under the Arizona Long Term Care System;
- Updating the Disproportionate Share Hospital (DSH) protocol to reflect the DSH pool funding amount for FY 2010;

- Aligning the State's section 1115 demonstration benefits with the benefits defined in the Medicaid state plan;
- Allowing the State to directly reimburse the Indian Health Service and 638 facilities; and
- Changing state procedure to allow the Arizona Health Care Cost Containment System to contract directly with a health plan to provide program oversight.

In addition, in May of last year we advised the State that because its CHIP eligibility freeze was in effect as of the date of enactment of the Affordable Care Act, that freeze did not constitute a violation of the Act's maintenance of effort (MOE) requirements. The State has accordingly stopped enrolling children in its CHIP program.

You inquired about denials of Arizona's requests to charge a fee for missed appointments and to terminate coverage of transportation services. I have asked my staff to review these decisions and explore options and alternatives that comply with the law and meet our shared goals.

As I wrote in my February 3 letter, I am committed to working with every state to explore all possible efficiencies in the Medicaid program. You rightly point out in your letter that Arizona is a leader, particularly with respect to its managed care initiatives.

At the same time, there are many ways we can all be pushing ahead to improve the way health care is delivered and financed in this country. For example, like many other states, Arizona has separate systems for providing physical and mental health care. Integrating care has been shown to improve health outcomes and lower costs for this particularly costly group of individuals. The health care costs of people who have even common chronic conditions such as asthma and hypertension in addition to mental illness can be 50 to 75 percent higher than they are for comparable patients with the chronic physical condition alone. The Affordable Care Act provides a temporary 90 percent matching rate to pay for care coordination services for people with multiple chronic conditions. We are eager to help you consider whether this two-year boost in federal payments could relieve Arizona of some costs it is now bearing at a lower matching rate while helping you to establish stronger care models that further reduce costs over the long term.

We are also available to work with you on the possibility of adopting a provider fee, as we have done with several other states. I am aware that the Arizona Hospital and Healthcare Association has recently come forward with a proposal to help the state finance at least some of its shortfall through such a fee. Your waiver request to me specifically mentioned that despite your efforts, such a proposal had not materialized. I realize that the Association's proposal is in an early stage, but I want to assure you that the full resources of our Department are available to you as you and the Association work to structure this fee in a fiscally responsible and permissible manner to help sustain program coverage in difficult economic times.

Finally, I am aware of Arizona's recent request that I use my section 1115 demonstration authority to waive the maintenance of effort requirement in the Affordable Care Act. Since the waiver request was submitted on January 25, CMS leadership has met twice with your staff with

respect to the waiver; we very much appreciate your staff's thorough presentations and willingness to quickly provide us with answers to the questions we have posed. We will continue to work with your staff as we consider your proposal and our legal options.

However, I do want to make you aware that the MOE provision in the Affordable Care Act does not require Arizona to renew its demonstration as is, beyond its expiration date of September 30, 2011. Waivers are time-limited commitments – both for a state and for HHS – and neither the Affordable Care Act nor Medicaid law or regulations prior to its enactment require a state to renew a demonstration beyond its expiration. Arizona may choose to terminate its current demonstration on September 30, 2011 and either not pursue a new demonstration or pursue a different demonstration. Any reduction in eligibility associated with the expiration of your demonstration for individuals whose eligibility derives from the demonstration (for example, the childless adult population) would not constitute an MOE violation.

CMS will follow up with your staff to walk through how the expiration of your existing waiver would affect the action you are seeking to take with respect to the temporary rollback of eligibility for various groups of individuals now covered in your program. Should the State elect to let the existing demonstration expire, Arizona would be required, in accordance with its current terms and conditions, to submit a demonstration phase-out plan to HHS by March 31, 2011, to ensure that the adverse impact on beneficiaries is minimized.

Please be assured that I am committed to continuing to work in partnership with you to address the State's fiscal challenges as well as the health coverage needs of Arizona's residents. I look forward to working with you in the days and weeks ahead.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Sebelius". The signature is fluid and cursive, with the first name "Kathleen" written in a larger, more prominent script than the last name "Sebelius".

Kathleen Sebelius

cc: Cindy Mann, CMCS
Victoria Wachino, CMCS
Gloria Nagle, ARA, San Francisco Regional Office