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ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

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Dear Mr. Rubio:

We are writing to seek guidance regarding Section 5006(d) of the American Recovery and Reinvestment Act (ARRA). The provision entitled "Protections for Indians under Medicaid and CHIP" applies certain rules to managed care organizations (MCOs) with respect to American Indian (AI) enrollees and Indian health care providers. Specifically, it requires that health plans who contract with AHCCCS:

(1) Include sufficient Indian health care providers within their network to ensure timely access to covered Medicaid managed care services; and
(2) make payments directly to those Indian health care providers for care furnished to American Indians (AIs) enrolled in a health plan "at a rate equal to the rate negotiated between such entity and the provider involved or, if a rate has not been negotiated, at a rate that is not less than" the amount the health plan would pay for the services if furnished by a non-Indian health care provider.

Arizona appreciates the goals in Section 5006 to ensure protections and access to care for AIs. However, it is important to note, Congress probably did not contemplate an existing system as comprehensive and flexible as the AHCCCS model. Instead, the requirement in Section 5006(d) was shaped using a national perspective without taking into account Arizona's unique and efficient arrangement described below.

AHCCCS permits AI Medicaid members enrolled in managed care to obtain services either through the managed care network or through the Indian Health Services (I.H.S.). or 638 facility at any time. There are no restrictions preventing an AI Medicaid managed care enrollee to obtain services from the I.H.S or 638 facility. If the member receives services through the I.H.S. or 638 facility, that I.H.S. or 638 facility then submits their claims directly to the AHCCCS Division of Fee-for-Service Management and is reimbursed directly by AHCCCS. In fact, under the rules of their contracts with AHCCCS, MCOs are prohibited from paying I.H.S. and 638 facilities directly for services furnished to Medicaid managed care enrolled AI members. The contract also does not include any reconciliation to MCOs for services provided by I.H.S. or 638s to AIs enrolled in an MCO, nor are these services encountered by the MCO. As such, the costs for services received at IHS or 638 facilities by AIs enrolled with an MCO are not included in MCO capitation rates. Therefore, there is no double payment in the system.

AHCCCS continues to successfully and efficiently provide care to AI members as it has since the inception of the program. Not allowing AHCCCS to directly pay I.H.S. and 638 facilities for services provided to AIs enrolled in MCOs represents a significant departure from the current practice that allows AHCCCS to maintain access to care for its AI members. Current practice also maintains maximum flexibility in choice of providers. Consequently, the new requirements pose a number of hurdles for I.H.S. and 638 providers participating in the AHCCCS program. On June 3, 2010, an AHCCCS tribal consultation was held regarding the relevant ARRA provisions. Representatives from both the Phoenix and Tucson Area Offices of the I.H.S. as well as representatives from tribal health programs operated under P.L. 93-638 were in attendance. In fact, the Phoenix Area I.H.S. noted that in the mid 1990s I.H.S. facilities experienced significant challenges working with similar attempt to change the system. Consultation participants also raised a number of other issues and concerns such as:

- ***Billing complexities/systems issues.*** This requirement poses significant billing complexities and systems issues not only for the health plans but also for the Indian Health Care providers who are not set up to bill various individual MCOs for acute and long term care services. The MCO claims filing process will likely impose additional requirements necessary for Indian Health care providers to receive payment, thus creating administrative burdens for Indian Health Care providers that do not currently exist. There would also be changes to the way in which Prior Authorization (PA) would be obtained as the health plans would require concurrent review and have different processes for obtaining PA.

- ***Funding Source.*** Because MCOs would be required to reimburse Indian health care providers directly, the State has significant concerns regarding how these 100% FFP costs would be accommodated in the capitation rates paid to the MCOs. Additionally, because the State would have to reconcile I.H.S. and 638 facilities for the difference between an MCO Fee-For-Service rate and the All Inclusive Rate (AIR), this could create a cash flow problem for the providers since such reconciliation is likely to occur annually.

- ***Waiver limitations.*** Currently, the AHCCCS Administration is preparing a request to CMS to waive AIs receiving care from I.H.S. or 638 facilities from the benefits limitations that will be applied to all other AHCCCS enrollees. The ARRA requirement discusses the provision of "covered Medicaid managed care services" through the MCO for AIs receiving care from an Indian Health Care provider. "Covered Medicaid managed care services" is defined in ARRA as "items and services for which benefits are available with respect to the individual *under the contract* between the [MCO] and the State involved." The benefit limitations recently prescribed by the state legislature will be included in the contracts between AHCCCS and the health plans and, therefore, it would limit Arizona's ability to waive these benefits reductions.

- ***Credentialing Requirements.*** Typically, it is recommended that providers working with AHCCCS contracted health plans establish a contract with that health plan. If an I/T/U seeks to become a contracted provider, it will have to be credentialed with each individual health plan and be subject to all of the relevant credentialing requirements in

the Balanced Budget Act (BBA) that establishes the requirements for Medicaid managed care.

The current practice that allows Medicaid MCO enrolled AIs to obtain health care services through any IHS and 638 facility ensures access to care at these facilities. Consequently, this provision does not expand access to care for AIs in Arizona, but rather creates barriers for AI Medicaid managed care enrollees to access care at IHS and 638 facilities where those barriers do not currently exist. This problem would be further exacerbated by a decrease in funds into the I.H.S. and 638 system, especially by smaller facilities, as a result of switching from the AIR to a FFS rate. Because of the decrease in reimbursement, some smaller facilities may not be equipped to expand services to meet their growing demands, and some may have to decrease the number or types of services offered.

As such, AHCCCS respectfully requests your guidance on steps Arizona can take to maintain its current practice that ensures the most flexibility for both its AIs members and providers who serve them without being in violation of changes in requirements provided in federal law. This has been a long-standing process that is supported by the State and its 22 tribes, as well as I.H.S. and 638 facilities. Because all of the parties involved believe this is the best method for maximizing access to care for AI Medicaid MCO enrollees, we respectfully request CMS' support in allowing Arizona to maintain its current process.

Sincerely,

Monica Coury

Cc: Cheryl Young
Beverly Binkier
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