

*Administrator*

Washington, DC 20201

APR 08 2013

Mr. Thomas Betlach
Director
Arizona Health Care Cost Containment System
801 East Jefferson Street
Phoenix, AZ 85034

Dear Mr. Betlach:

As you are aware, the United States District Court for the District of Arizona in the case *Wood v. Betlach*¹ has remanded to the Centers for Medicare & Medicaid Services (CMS) the approval of Arizona's March 31, 2011, request for a new section 1115 demonstration, "Arizona Health Care Cost Containment System" (AHCCCS) (project numbers 11-W-00275/09 and 21-W-00064/9). In light of this ordered remand, CMS has reconsidered the state's requests and re-analyzed the administrative record as of October 21, 2011, including objections raised by interested parties. As detailed below, CMS reaffirms its prior decision of October 21, 2011, and is re-approving a portion of the requests Arizona included in its March 31, 2011, proposal for a new section 1115 demonstration.

This section 1115 demonstration is approved for a 5-year period from October 22, 2011, through September 30, 2016, with some authorities expiring on December 31, 2013. While the specific details are contained in the Special Terms and Conditions (STCs) that were transmitted with CMS's prior decision letter (and which are incorporated by reference herein), we again approve the following requests from the state's March 31, 2011, proposal:

1. Expenditure authority to claim federal financial participation (FFP) for the payment of Medicare Part B premiums for non-Qualified Medicare Beneficiary (QMB) dual eligibles with income up to 300 percent of the Federal Benefit Rate (FBR);
2. Expenditure authority to provide an additional 2-month period of eligibility for beneficiaries after losing Supplemental Security Income (SSI) eligibility;
3. Authority to require mandatory copayments for the childless adult expansion population. This authority expires on December 31, 2013;
4. Authority to impose \$4 copayments (round trip) on taxi rides for certain childless adults residing in Maricopa and Pima counties. This authority expires on December 31, 2013; and
5. Authority to permit providers to charge a \$3 fee for parents and childless adults outside of Maricopa and Pima counties who miss scheduled appointments without providing 24-hour advance notice of any cancellation.²

¹ Case No. CV-3:12-08098 (Order, Dkt. 102, filed Feb. 7, 2013)

² This authority expired on January 1, 2013, under the terms and conditions of the demonstration as originally approved on October 21, 2011.

This approval provides Arizona the authorities to furnish health care services through a statewide, capitated, managed care delivery model for Medicaid state plan groups and to continue to cover groups not currently covered under its Medicaid state plan, or to provide some additional benefits to, including (1) individuals who lose SSI benefits; (2) certain low-income individuals eligible for both Medicaid and Medicare (dual eligibles) who otherwise would not qualify for Medicaid payment of Medicare Part B premiums; and (3) adults without dependent children (childless adults) enrolled in the previous demonstration.

The AHCCCS demonstration, through a subsequent April 2012 amendment approval, created the KidsCare II program which provides coverage to children who are eligible for the state's Children's Health Insurance Program (CHIP), but are not able to enroll due to that program's current enrollment freeze. The April 2012 amendment also established a Safety Net Care Pool (SNCP) that provides uncompensated care payments to participating hospitals as well as providing authority for IHS and tribal facilities to claim for incurred uncompensated care costs. Finally, CMS intends to amend the demonstration in April 2013 to expand KidsCare II coverage by increasing the upper eligibility limit, and expanding the SNCP to include additional participating providers.

The overall goal of the AHCCCS demonstration is to test health care delivery systems to provide organized and coordinated health care for both acute and long term care that include pre-established provider networks and payment arrangements, administrative and clinical systems for utilization review, quality improvement, patient and provider services, and management of health services. In this way, the demonstration will test the use of managed care entities to provide cost effective care coordination to approximately 1.2 million beneficiaries. The demonstration will also test the extent to which health outcomes in the overall population are improved by expanding coverage to additional needy groups, including the approximately 81,000 childless adults and the 25,000 children enrolled in the KidsCare II component of the demonstration. Finally, the demonstration will allow the state to also test the effects of increasing personal financial responsibility on utilization and health outcomes on some populations by permitting cost sharing.

We understand from the state that imposing mandatory copayments on the childless adult population is necessary in order to prevent the state from implementing other, more severe – and in our view, worse – alternatives, such as covering fewer people in this population by lowering the qualifying federal poverty level (FPL) percentage limit, reducing benefits for the currently-covered population, or eliminating coverage of this expansion population entirely. We feel that the state's decision to freeze enrollment for the childless adult eligibility group in the state's previous section 1115 demonstration (project numbers 11-W-00032/09 and 21-W-00009/9) on July 8, 2011, evidences the likelihood that without the mandatory copayments on this population, the state would likely implement such alternatives. We also recognize that some stakeholders object to CMS granting Arizona the authority to impose copayments on childless adults for certain medical services because of perceived hardships such copayments may cause the covered population. Moreover, we recognize that some stakeholders believe that mandatory copayments are not an effective Medicaid cost-saving measure.

In administering the joint federal-state Medicaid program, CMS is reasonably relying on the state's assertions about what alternative choices the state may make in the absence of CMS's

approval. While we recognize the objection of some stakeholders that copayments will not result in cost savings, and even if we entirely agreed with this position, when weighed against the alternatives the state proposes as described above, we conclude that the childless adult expansion population is better served by being covered under this demonstration project – including having to make copayments for services – than it would be without any, or more limited, coverage by the state. We note that the state is under no obligation, prior to January 1, 2014, to provide coverage for this population at all. Therefore, the objectives of the Medicaid program are furthered by Arizona continuing to cover the existing childless adult expansion population at the previous levels, even while requiring the population to pay copayments that have been authorized for this population since 2003. Moreover, we believe our approval reflects the intent of Congress for states to maintain health care coverage for current beneficiaries, as set forth in the Patient Protection and Affordable Care Act’s maintenance of effort (MOE) provisions. *See* ACA § 2001(b), 42 U.S.C. § 1396a(gg).

Like extending coverage for individuals who lose SSI eligibility and dual eligibles, maintaining as much of the current coverage of the childless adult population as possible is an important feature of the AHCCCS demonstration. It furthers the coverage objectives of the Medicaid program in the context of the program as it currently exists, that is before the changes in eligibility that are effective January 1, 2014. As your submissions reflect, the imposition of the proposed copayments is only one element of the demonstration. As a result, CMS does not view the copayments for childless adults in isolation, but we consider them in the context of the demonstration as a whole, which is intended to increase access to care and improve quality of care for the state’s Medicaid population and for expansion populations in particular.

In addition to providing benefits to a population who would not otherwise receive them, CMS expects the demonstration to reveal useful information about alternative ways to administer the Medicaid program. To this end, Arizona will test several hypotheses related to the impact of the childless adult copayments on access, outcomes, and costs of care, including the impact of the copayment on non-emergency medical transportation (NEMT) on beneficiaries’ access to care and the missed appointment fee on the rate of missed appointments, as outlined in our October 7, 2011, letter. In order to evaluate these hypotheses, the demonstration will review utilization and cost data and quality measures related to the childless adult population enrolled under the demonstration, as specified in the approved STCs.

Specifically, the demonstration will test the effects of the imposition of mandatory copayments on childless adults in the following areas:

1. Utilization of needed preventive, primary care, and treatment services;
2. Appropriate utilization of emergency room care, and appropriate, cost-effective, and clinically effective use of generic and brand name drugs;
3. State and federal expenditures (per enrollee) in the short and long term; and
4. Physician participation, including physician willingness to accept appointments from the childless adult population.

We are aware that some stakeholders object to CMS approving Arizona’s request for authority to impose mandatory copayments on the childless adult expansion population because they feel no valid demonstration purpose can be articulated or demonstration program executed. These

stakeholders assert, in various ways, that the effects of copayments have been researched and tested for the past 40 years. They further contend that copayments have been proven to have uniformly negative consequences for low-income people, and, therefore, that nothing else can be learned from approving Arizona's request to impose copayments on the expansion population in this demonstration. CMS, based on its extensive expertise in this area and its mission to ensure access to quality care for all populations, disagrees with the ultimate conclusion that no useful information can be learned from this demonstration.

The CMS is aware of the research conclusions regarding the negative effects of cost sharing on low-income populations that objecting stakeholders advance as a basis for disapproving the mandatory copayments. We believe, however, that this demonstration – based in part on the hypotheses set forth in the STCs – will address existing gaps in the research or otherwise strengthen the research literature on cost sharing with respect to low-income adults by testing the impact of the childless adults' copayments on access, outcomes, and costs of care.³ Without dismissing or discounting the research that stakeholders cite, CMS believes that the AHCCCS demonstration can provide useful information that will help CMS craft future Medicaid policy consistent with providing quality care to low-income populations.

The CMS has determined that the state's demonstration will help answer previously unresolved questions about cost sharing in the Medicaid program, particularly with respect to the effect of cost sharing on the non-emergency use of the emergency department (ED) among Medicaid beneficiaries. CMS is aware of the literature and research that shows, with respect to the private health insurance market, a reduction in emergency service use in response to imposing small copayments. We believe, however, that Arizona's demonstration can provide needed information regarding the effects of similar copayments in the Medicaid program, which has a population that may have fewer options for obtaining care than the privately-insured individuals who are the subjects of existing research. More research on the non-emergency use of the ED by the childless adult expansion population will help inform public policy on this important issue for state Medicaid programs.

The literature and research familiar to CMS staff similarly does not describe the long-term effects of imposing copayments on the non-emergency use of the ED on Medicaid beneficiary health outcomes, nor does it indicate whether there is an increase in the utilization of other types of care, such as physician visits and hospitalizations. Again, CMS has determined that the AHCCCS demonstration will be able to test health outcomes and whether there are increases in utilization of other types of care. Moreover, the results of the state's evaluation may provide a more specific test of the impact of limited copayments on health care utilization compared to other state demonstrations, such as Oregon's section 1115 demonstration, where copayments are generally higher and are imposed on a larger scale.

The AHCCCS demonstration will also test several areas that have not been extensively researched in the past, including the impact of copayments on provider participation, prescription drug utilization, and transportation. CMS is not aware of any previous research on whether mandatory copayments affect non-emergency transportation utilization. We expect Arizona's demonstration

³ A useful summary of some of the unresolved questions concerning copayments for low-income people is found in the Declaration of Victoria Wachino dated August 15, 2012, which is on file with the district court in *Wood v. Betlach*, No. 3:12-cv-08098-DGC (docket entry 66-1).

to provide information by testing whether imposing copayments for non-emergency transportation results in lower utilization of primary and specialty care, or if such copayments increase use of the ED. Finally, the state will test the effectiveness of missed appointment fees. This is an area, too, in which CMS is not aware of any previous literature and research, and we feel that the demonstration will enable the state to test how these fees affect the utilization of office visits, as well as visits to the ED.

As you are aware, CMS and the state worked extensively to develop the AHCCCS demonstration's hypotheses to ensure that they will test areas or issues that can provide further useful information to the state and federal government in administering the Medicaid program. Because the demonstration will provide helpful information in areas where, as described above, little or no research exists, particularly with respect to the Medicaid population, CMS believes that the demonstration achieves this goal.

The CMS has not approved, and did not incorporate, the following state requests from the March 31, 2011, proposal in the AHCCCS section 1115 demonstration:

1. Waiver to permit the elimination of coverage for 60,000 parents with family income between 75 and 100 percent of the FPL;
2. Authority to further reduce the enrollment level of the childless adult population based on available funding;
3. Authority to permit a change in eligibility procedures that would provide for eligibility redetermination every six months for the childless adult and parent populations, rather than the current 12-month schedule;
4. Mandatory copayments on children, pregnant women and Temporary Assistance for Needy Families (TANF) parents;
5. Waiver of emergency services to individuals who do not qualify for Medicaid based on their immigration status; and
6. Authority to impose a \$50 annual assessment on childless adults who smoke.

Your project officer is Ms. Jessica Schubel. She is available to answer any questions concerning your Section 1115 demonstration. Ms. Schubel's contact information is as follows:

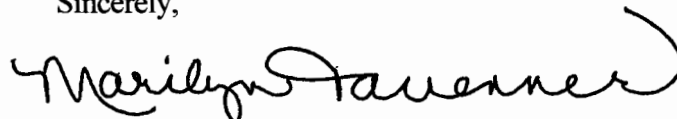
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Official communications regarding program matters should be sent simultaneously to Ms. Schubel and to Ms. Gloria Nagle, Associate Regional Administrator for the Division of Medicaid and Children's Health Operations in our San Francisco Regional Office. Ms. Nagle's contact information is as follows:

Ms. Gloria Nagle
Associate Regional Administrator
Division of Medicaid and Children's Health Operations
90 Seventh Street, Suite 5-300 (5W)
San Francisco, CA 94103 -6706

If you have questions regarding this approval, please contact Ms. Jennifer Ryan, Acting Director, Children and Adults Health Programs Group, Center for Medicaid and CHIP Services, at (410) 786-5647.

Sincerely,

A handwritten signature in black ink that reads "Marilyn Tavenner". The signature is fluid and cursive, with a large loop at the end of the last name.

Marilyn Tavenner
Acting Administrator

cc: Cindy Mann, Director, CMCS
Jennifer Ryan, CMCS
Gloria Nagle, Associate Regional Administrator, Region IX
Jessica Schubel, CMCS
Judge David G. Campbell, United States District Judge, District of Arizona
Sue Ellen Katz, Morris Institute, Plaintiffs' Counsel,
Wood v. Betlach, Case No. 3:12-cv-08098 -DGC (filed May 21, 2012)