

**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

January 15, 2010

Department of Health & Human Services  
Departmental Appeals Board, MS 6127  
Appellate Division  
330 Independence Ave., S.W.  
Cohen Building, Room G-644  
Washington, DC 20201

Re: State of Arizona Health Care Cost Containment System;  
Notice of Appeal

Dear Sir or Madam:

Pursuant to 45 C.F.R. Part 16, the State of Arizona Health Care Cost Containment System (the "State") hereby appeals the decision of Centers for Medicare & Medicaid Services ("CMS") that Arizona does not qualify for a Performance Bonus Payment under 42 U.S.C. § 1397ee(a)(3) based on CMS' determination that the State does not meet the five of the eight requirements of subsection (a)(4) of that same section. The decision was announced in a letter to the State dated December 18, 2009. A copy of the decision is attached.

Beginning with fiscal year 2009 and ending with fiscal year 2013, the Performance Bonus Payment provision mandates that the Secretary pay qualifying states an amount based in increases in Medicaid child enrollment and projected per capita state Medicaid expenditures. The State estimates that it is entitled to more than \$3.7 million for fiscal year 2009 and more than \$31.5 million for the entire Performance Bonus Payment period.

As background, on September 29, 2009, the State 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. The State also completed the required Bonus Payment (BP) template on November 6, 2009. In its submission, the State established that the five criteria that 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. The CMS decision letter of December 18, 2009 states "CMS has determined that you did not qualify for the Automatic Renewal and Express Lane program features." Our disagreement with those conclusions follows.

The "Automatic Renewal" feature of a state eligibility process is described at 42 U.S.C. § 1397ee(a)(4)(E) which 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, the Act allows the automatic renewal criteria to be met by *either* use of a pre-printed form *or* if the State does not require an in-person interview for renewal of eligibility. The State’s application for the Performance Bonus Payment, its completed Performance Bonus Payment template, and the supporting documentation provided to CMS all clearly explained that the State does not require an in-person interview for renewal of eligibility of children. CMS has not contested the fact that the State does not require in person interviews. It is the State’s understanding that CMS has taken the position that, for a State to meet this qualification, the State must satisfy the requirements of both subsections (a)(4)(E)(i) and (a)(4)(E)(ii) – a position that is contrary to the explicit and unambiguous language of provision.

### **Express Lane Eligibility**

The “Express Lane Eligibility” feature of a state eligibility process is listed as a qualifying feature in 42 U.S.C. § 1397ee(a)(4)(G) which incorporates by reference the Express Lane Agency option in 42 U.S.C. § 1396a(e)(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, the State Medicaid Agency, as described in its Medicaid State Plan, accepts, for purposes of Title XIX and Title XXI eligibility determinations, the determinations of the Arizona Department of Economic Security (DES) - the public agency that makes eligibility determinations for the Temporary Assistance for Needy Families (TANF) benefit – with respect to several Medicaid and CHIP eligibility components such as income, residency, social security number, age and deprivation. This process has been in place in Arizona since 1996 for the Medicaid program and since 1998 for the CHIP program. Arizona

submitted a State Plan Amendment per CMS guidance to officially title the process as Express Lane under CHIPRA.

It is the State's understanding that CMS has taken the position that this does not meet the requirements under the Act because there was nothing "new" added to our current process; that is, the State would have met the Express Lane criteria if the State TANF agency and the State Medicaid had been operating independently until "recently," and then the two agencies entered into an agreement that would result in the same process the State currently uses. There is absolutely no support for such a position in the language of the Act. The Act clearly includes TANF agencies as possible Express Lane Agencies. There is nothing anywhere in the statute that requires for a new process or change in existing processes for those states who already meet this criteria.

For these reasons, the decision by CMS that the State does not meet the criteria in 42 U.S.C. § 1397ee(a)(4) is clearly erroneous and contrary to law.

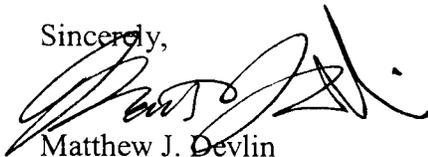
Please be advised that I will be representing the State for purposes of this appeal. Future correspondence regarding this matter may be directed to me. My contact information is:

Matthew J. Devlin  
Assistant Director  
Office of Administrative Legal Services  
Arizona Health Care Cost Containment System  
701 East Jefferson, MD-6200  
Phoenix, AZ 85034

tel: (602) 417-4008  
fax: (602) 253-9115  
email: matt.devlin@azahcccs.gov

We look forward to a prompt and just resolution of this matter.

Sincerely,



Matthew J. Devlin  
Assistant Director  
Office of Administrative Legal Services

Enclosure

c: Cynthia Mann, CMSO  
Gloria Nagle, CMS Region IX  
Thomas J. Betlach

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop S2-26-12  
Baltimore, Maryland 21244-1850



Center for Medicaid and State Operations

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December 18, 2009

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

Dear Mr. Betlach:

Thank you for submitting a request to receive a Performance Bonus Payment (Bonus Payment) for Federal fiscal year 2009 (FY09) under the provisions of section 2105(a)(3) and (4) of the Social Security Act (the Act), as amended by section 104 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). As outlined in the statute, States must satisfy two sets of criteria in order to qualify for a Bonus Payment: 1) States must have in place five Medicaid and/or CHIP program features (as specified at 2105(a)(4)) known to promote enrollment in health coverage for children; and 2) States must demonstrate a significant increase in Medicaid enrollment among children during the course of the fiscal year (as specified at 2105(a)(3)).

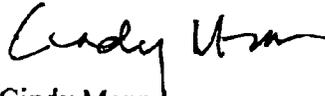
On November 6, 2009, you submitted a request for the Centers for Medicare & Medicaid Services (CMS) to review five program features and determine if they meet the qualification for a Bonus Payment. After that review, which included conversations with your staff, CMS determined that Arizona did not meet five of the eight required program features set forth in section 2105(a)(4) of the Act necessary to qualify for a FY09 Bonus Payment. This review found that you met three of the eight required program features necessary to qualify for a Bonus Payment. CMS has determined that you did not qualify for the Automatic Renewal and Express Lane program features.

CMS commends your efforts to enroll eligible children in health insurance coverage programs and your commitment to a simplified and family friendly enrollment and renewal process. Assuming your efforts to improve your programs continue, we are confident that you will be in a good position to qualify for a Bonus Payment in future fiscal years.

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If you believe you have additional information that will affect this determination, please contact Ms. Jennifer Ryan at [Jennifer.Ryan@cms.hhs.gov](mailto:Jennifer.Ryan@cms.hhs.gov) or (410) 786-3393 within 30 days of the date of this letter.

Sincerely,



Cindy Mann  
Director

cc: Gloria Nagle, ARA, CMS Region IX