



# Inter Tribal Association of Arizona

21 TRIBAL NATIONS

## Comments by the Inter Tribal Council of Arizona on the Implications of the Section 1115 Research & Demonstration Waiver Proposed by the Arizona Health Care Cost Containment System (AHCCCS) on American Indian Nations and Tribes and the Indian Health Care System in Arizona

February 28, 2017

Ak-Chin Indian  
Community

Cocopah  
Indian Tribe

Colorado River  
Indian Tribes

Fort McDowell  
Yavapai Nation

Fort Mojave  
Indian Tribe

Gila River Indian  
Community

Havasupai Tribe

Hopi Tribe

Hualapai Tribe

Kaibab Band of Paiute  
Indians

Pascua Yaqui Tribe

Pueblo of Zuni

Quechan Tribe

Salt River Pima-  
Maricopa Indian  
Community

San Carlos  
Apache Tribe

San Juan  
Southern Paiute Tribe

Tohono O'odham  
Nation

Tonto Apache Tribe

White Mountain  
Apache Tribe

Yavapai-Apache  
Nation

Yavapai-Prescott  
Indian Tribe

The twenty one Member Tribes of the Inter Tribal Association of Arizona (ITAA) appreciate this opportunity to comment on the legislatively directed Arizona Section 1115 Demonstration Waiver that requires the Arizona Health Care Cost Containment System (AHCCCS) to apply to the Centers for Medicare and Medicaid Services (CMS) by March 30 of each year for a Waiver (or amendments) to the current Section 1115 Demonstration. The proposed Waiver is based on provisions in Senate Bill 1092 that stipulated new requirements on able-bodied adults enrolled in Medicaid and Senate Bill 1475 that increased co-payments and eliminated non-emergency transportation as a covered service. These bills were signed into law by Governor Douglas Ducey on March 6, 2015. The member Tribes of the ITAA and the Navajo Nation had collectively opposed the legislation and requested vetos by Governor Ducey, due to the implications of these mandates on a significant portion of the American Indian population who receive Medicaid covered services and the financial impact on Indian Health Care Providers (IHP). Tribes were not a party to the development of the legislation or included in any stakeholder group, although once signed into law an AHCCCS Tribal consultation session was held on the proposal. The Waiver was submitted to CMS in March 2016 for the renewal of Arizona's Demonstration for a five year period from October 1, 2016 thru September 30, 2021.

This year AHCCCS is again required to seek a Waiver from CMS to enable the State to require "able-bodied adults" to participate in the AHCCCS Works program that will impose the following:

- The requirement for all able-bodied adults to become employed or actively seeking employment or attend school or a job training program.
- The requirement for able-bodied adults to verify on a monthly basis compliance with the work requirements and any changes in family income.
- The authority for AHCCCS to ban an eligible person from enrollment for one year if the eligible person knowingly failed to report a change in family income or made a false statement regarding compliance with the work requirements.
- The authority for AHCCCS to limit lifetime coverage for all able-bodied adults to five years except for certain circumstances.

The proposed requirements on "able-bodied adults" if implemented in 2017 or anytime in the future would begin to have a negative effect on nearly half of the American Indian population who are eligible for or enrolled in the AHCCCS American Indian Health Program or one of the AHCCCS managed care health insurance plans. When AHCCCS first proposed these

requirements there were approximately 114,296 American Indians/Alaska Natives (AI/AN) enrolled in the American Indian Health Program (AIHP), the only fee-for-service non-managed care health plan in the state of Arizona and 40,000 AI/AN enrolled in Managed Care Organizations (MCO's), a total of 154,300. In 2017, this figure has increased by 23,646 or about 177,946 tribal members. It has grown substantially because more AI/AN childless adults up to 100% of the Federal Poverty Level (FPL) were restored to coverage and childless adults were included the new expansion group up to 133% FPL as of January 1, 2014.

The previous Administration approved several elements of Arizona's proposal on September 30, 2016. These included the requirement that individuals in the new adult group between 100%-133% FPL participate in the AHCCCS Care program. AHCCCS now requires individuals to establish Health Savings Accounts, pay a \$25 annual premium and make co-insurance payments for emergency services and certain types of health care services and prescriptions. American Indians and Alaska Natives (AI/AN) are exempt from participating in the AHCCCS Care program. AHCCCS has instituted the established federal exemptions from cost sharing that apply to AI/AN enrolled in the American Indian Health Program and to those enrolled in Managed Care as long as they have ever received services through IHS or tribal 638 facilities or urban Indian health program. The current policy in this regard is based on 42 CFR 447.56(a)(1)(x), as well as (AAC R9-22-711(C)(8)), and the Medicaid State Plan.

At the AHCCCS Tribal Consultation on January 18, 2017, the Tribes were apprised of what was contained in the draft Waiver proposal. Among the issues that were discussed they questioned whether or not it would be possible to exempt AI/AN and eligible persons who receive their health care through an Indian Health Care Provider (IHCP) from the AHCCCS Works programs as well as the 5 year cap on Medicaid coverage in one's lifetime. At the present time, AI/AN who receive services at an IHS or Tribal health facility are not exempt. This would require reversing SB 1092 by amending Arizona Revised Statute 36-2903.09 or providing these exemptions in the state budget reconciliation process. The San Carlos Apache Tribe took the step to make this request to their Representatives and Senators in the Arizona State Legislature as well as to the Chairpersons of the Health Committees in the House of Representatives and the Senate. Representative Wenona Benally recently introduced HB2479 for this purpose. The bill seeks to exempt individuals who obtain their services from an IHCP addresses from the 5 year lifetime cap on Medicaid in one's lifetime, the monthly employment and income reporting requirements that if not complied with may result in banishment from enrollment for one year. Without an exemption, A.R.S. 36-2903.09 creates significant burdens on a substantial portion of the AI/AN population that may be below or barely above the federal poverty level that access health care in the Indian health care system will be inevitable. Further, if these measures are approved by CMS, it will result in a substantial reduction to Medicaid reimbursement levels that have been available to Indian health care providers since 1976. It should be noted that all Indian Health Service and Tribal facilities rely on the 100% *pass through* of Federal dollars in order to achieve the level of care that is required by CMS. In other words, the state budget is not impacted by services provided at these facilities. It should be further noted that providers in the Managed Care System may begin to access the 100% pass through for the AI/AN patients they serve as a result of the updated CMS Managed Care rule published on April 25, 2016.

The additional comments below reflect the concerns of its member Tribes on certain sections of the proposal.

## AHCCCS CARE Program

The proposal initiated in Arizona on October 1, 2016, to modernize Medicaid in Arizona is called AHCCCS CARE. *“The goals are to engage Arizonans to take charge of their health, make Medicaid a temporary option and promote a quality product at the most affordable price.”* Tribal Leaders are concerned that populations who are eligible for Medicaid in Arizona, including American Indian people are the most economically disadvantaged and at risk individuals in terms of health status. Three years ago, the state of Arizona restored coverage to the poorest of childless adults up to 100% FPL and expanded Medicaid eligibility to childless adults up to 133% FPL. These policy changes have improved access to health care and assured gains in the health status of these individuals. ITAA restates its prior position is that if AHCCCS CARE is approved as proposed, limiting adults, age 19 and older who do not meet exemption criteria, would only be eligible for Medicaid for 5 years in one’s lifetime. It will negatively impact nearly half of the American Indian population in Arizona and cause severe financial repercussions to the Indian health care system.

A five year cap on Medicaid eligibility is an extreme measure that does not appear to be in keeping with the purpose of Section 1115 of the Social Security Act which provides states the flexibility to manage, design, and improve their programs to enhance an individual’s ability to improve and sustain their health over time. Further, while the aim of the proposal appears to be to reduce the state match to the Medicaid program over time, simply capping Medicaid eligibility should not be considered “innovative” by CMS in terms of reducing costs and improving the efficiency of the health care system as these individuals will likely become the burden of emergency and urgent care providers.

## Legislative Partnership Sections of the Proposed Arizona Waiver

The legislatively mandated provisions contained in A.R.S. 36-2903.09 include many of the more impactful changes that have been approved through September 30, 2021. A number of the Tribes have passed resolutions or submitted letters citing the components contained in SB1092 that would negatively impact tribal members that obtain their health care at Indian Health Service (IHS) and Tribal hospitals, clinics and urban Indian health programs.

The Arizona statute cited above requires AHCCCS to propose a five-year lifetime eligibility limit on able-bodied adults. This policy change is not supported by the Inter Tribal Association of Arizona. The law provides exemptions to the 5-year cap, but does not take into consideration Tribal members in general that are served at Indian Health Service, Tribes and Urban Indian programs, which is recommended. The current exemptions include: 1) pregnant; 2) the sole caregiver of child under the age six; 3) receiving long term disability benefits from the government or a private insurer; 4) at least 19 years of age and still in high school; or 5) under the age of 26 and in the custody of the Department of Child Safety when the individual turned 18 years of age.

The Arizona statute further requires AHCCCS to propose work requirements on able-bodied adults. The statute specifies they must become employed, actively seek employment, attend school or a job training at least 20 hours per week and verify on a monthly basis they are in compliance. Changes in family income must be reported by the eligible person. The AHCCCS administration must verify income and re-determine eligibility. If approved, AHCCCS would be able to ban an eligible person from enrollment for one year, if the person knowingly fails to report a change in family income or made a false statement. ITAA believes that individuals in Tribal communities will have the most difficulty meeting the work

requirements and likely lose their Medicaid eligibility quickly due to the high unemployment rates on tribal reservations.

#### Uncompensated Care Payment to IHS and Tribes

ITAA supports the continuation and permanent renewal of the uncompensated care payments to IHS and Tribes for Medicaid benefits no longer covered in the state plan. At the present time, this includes emergency dental care for adults. ITAA had submitted letters to Thomas Betlach, AHCCCS Director, in 2015 addressing the need to re-evaluate the payment methodology and requested that an interim Tribal workgroup be created to study the formula and associated values (i.e., user population, historical payments, provider rates, etc.) which have been used to calculate the Per Member/Per Month (PMPM) rate of reimbursement for uncompensated care payments. The concerns relate to payments for claims that resulted in underpayments that do not keep pace with the costs of care provided to the population. This became evident after AHCCCS adjusted the payment methodology on January 1, 2014, due to what was reported by AHCCCS as a high administrative burden of the prior claims methodology option that the agency indicated it could no longer maintain. AHCCCS agreed that a Tribal workgroup be convened in December 2015 and it was joined by AHCCCS staff that provided technical assistance through April 2016 when the recommendations of the workgroup were presented at Tribal consultation. The recommendations included restoring the prior AHCCCS policy that allowed the facilities to choose either the PM/PM payment methodology of the In June 2016, AHCCCS staff relayed to CMS, that is did not plan to alter the payment methodology until such time that the Arizona State Legislature has an opportunity to determine if emergency dental care for adults would be restored as part of the state budget in State Fiscal Year 2018. AHCCCS is including the Tribal workgroup recommendations in this years' proposal. ITAA is pleased that the restoration of this coverage is included in the Governor's proposed budget. See:

<https://www.azahcccs.gov/AmericanIndians/Downloads/Consultations/Meetings/2016/42116ProposedAz1115UncompCare.pdf>

**Conclusion:** The Indian Health Care Improvement Act of 1976, authorized IHCP participation in Social Security Act programs. Medicare, Medicaid and the Children's Health Insurance Program provides reimbursement to these programs which allows more medical services to be provided to AI/AN beyond what is possible through Indian Health Service appropriations alone. IHS funded programs must meet CMS credentialing requirements and quality of care standards in order to receive these payments. These reimbursements account for at least 1/4 or more of the resources needed for the IHS system to operate. A capped Medicaid program and the one-year banishment to be enrolled in Medicaid if work and income reporting requirements are not met on a monthly basis will reduce these resources at IHS, Tribal and urban Indian programs across the board. This is a major concern of the Member Tribes of the ITAA.

#### Comments Submitted by:

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Executive Director

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## 23<sup>rd</sup> Navajo Nation Council

February 28, 2017

Submitted via: [publicinput@azahcccs.gov](mailto:publicinput@azahcccs.gov)

Arizona Health Care Cost Containment System  
Office of Intergovernmental Relations  
801 E. Jefferson Street, MD 4200  
Phoenix, AZ 85034

To Whom It May Concern:

As a member of the 23<sup>rd</sup> Navajo Nation Council and chairman for the Health, Education, and Human Services Committee (HEHSC), I hereby oppose the inclusion of American Indians to certain provisions of the Proposed Arizona Section 1115 Waiver Amendment of Arizona Senate Bill 1092 to Centers for Medicare and Medicaid Services (CMS).

In 2010, the census demographic analysis showed a population of approximately 174,000 on the Navajo Nation. Currently, the unemployment rate is at forty-two percent (42%) with an annual per capita of nearly \$9,993.75. There are many contributing factors to the high unemployment rate on the Navajo Nation, which includes the shortage of employment opportunities, access to technology, proximity to roads, limited training and educational opportunities.

The Navajo Nation is facing a possible shut down of the Navajo Generation Station and the Peabody Coal Mine. If this occurs, it may increase the unemployment rate within the Nation, and could reduce the Navajo Nation General Fund Revenues by thirty percent (30%). The Nation's top priority is to generate economic development and provide employment opportunities to our Navajo citizens. Please understand that the Navajo Nation is in a very difficult position economically.

Several provisions within the Arizona Section 1115 Waiver have been identified that could contain barriers to expand health care coverage to the Navajo people, and such provisions may generate gaps in critical services. It is our understanding that the underlying restrictions and requirements of the Section 1115 waiver is a policy to incent, or induce work, and create self-reliance of the Arizona Health Care Cost Containment System (AHCCCS) clients.

The proposed Section 1115 Waiver Amendment states, “all able-bodied adults become employed or actively seek employment, or attend school or a job training program.” The amendment also requires beneficiaries to “verify on a monthly basis compliance with the work requirements and any changes in family income.”

Furthermore, AHCCCS requires members to pay contributions (i.e. copays and premiums), which may pose as a burden for Navajo citizens who face high unemployment rates on the Nation, which is also facing potential economic shortfalls.

The trust responsibility for Indian health care was developed over 100 years ago with treaties, federal laws, court cases, and the development of federal health care programs. With that notion in mind, many 638 Indian Health Care facilities are 100-percent (100%) matched by Medicaid and the Affordable Care Act (ACA). It is policy development that allows the federal system to fulfill its trust obligation in a more efficient manner. AHCCCS has become the primary provider of Indian health care in Arizona for 638 Indian health care facilities, and should be preserved at all costs.

We recognize that CMS may shift to change federal policy to make further cuts in the Medicaid-ACA system, but we are apprehensive about many of the proposed changes to the ACA and Medicaid at the federal level, most notably the Indian Health Care Improvement Act.

Given that AHCCCS programs are an important mechanism for the United States in fulfilling its trust responsibility to American Indian Nations and their health care needs. In understanding the extreme challenges facing the Navajo economy, we strongly urge you to consider an exemption for Native Americans from the Section 1115 Waiver Amendment for services that are matched at 100-percent (100%).

Attached are supporting resolutions from the Fort Defiance Indian Hospital Board, INC (FDIHB) and Winslow Indian Health Care Center (WIHCC).

Respectfully,



Council Delegate Jonathan Hale, *Chairman*  
Health, Education, and Human Services Committee  
23<sup>rd</sup> Navajo Nation Council

Cc: Honorable Jamesita Peshlakai  
Honorable Eric Descheenie  
Honorable Wenona Benally  
Navajo Nation President Russell Begaye, *OPVP*  
Navajo Nation Speaker LoRenzo Bates, *23<sup>rd</sup> NNC*

23<sup>rd</sup> Navajo Nation Council  
Thomas J. Betlach, *Director, AHCCCS*  
Bonnie Talakte, *Tribal Relations Liaison, AHCCCS*  
Michael Bielecki, *Lobbyist*



PO Box 649 FORT DEFIANCE, AZ 86504 PHONE: 928.729.8000 FAX: 928.729.8019 WEBSITE: [WWW.FDIHB.ORG](http://WWW.FDIHB.ORG)

**FDIHB-FEB-F12-2017**

**RESOLUTION OF THE FORT DEFIANCE INDIAN HOSPITAL  
BOARD, INC. (FDIHB)**

**Opposing the Inclusion of American Indians/Alaska Natives to the Proposed Arizona  
Section 1115 Waiver Amendment of Arizona Senate Bill 1092**

**WHEREAS:**

1. The Fort Defiance Indian Hospital Board, Inc. (FDIHB), was approved and certified by the Navajo Nation Business Regulatory Department, Division of Economic Development, on July 31, 1995; and
2. FDIHB assumed operation and management of the Fort Defiance Indian Hospital, now called the Tséhootsooí Medical Center, Nahata' Dziil Health Center, and related health programs, on March 28, 2010, pursuant to a self-determination contract authorized by the Indian Self-Determination and Education Assistance Act, P.L. 93-638, as amended; and
3. Pursuant to Article IV, Sections 1 and 2 of the FDIHB Bylaws, the FDIHB Board of Directors (Board) is empowered to conduct, manage, and control the affairs and business of the Corporation; and
4. The mission of FDIHB is "To provide superior and compassionate healthcare to our community by raising the level of health, Hózhó, and quality of life;" and
5. The vision of FDIHB is "harmoniously uniting communities by engaging customers in healthy lifestyles;" and
6. Pursuant to 42 C.F.R 431.408, the Arizona Health Care Cost Containment System (AHCCCS), Arizona's Medicaid agency, is required to submit a public notice of its intent to submit a Section 1115 Waiver Amendment to the Centers for Medicare and Medicaid Services (CMS); and
7. At the direction of the Arizona State Legislature and upon CMS approval, AHCCCS proposes implementation of the following requirements for "able-bodied adults" receiving Medicaid services (Attached as Exhibit A):



- a. Waiver of 1092(a)(10)(A) to enable the State to impose work requirements for “able-bodied adults”;
  - b. Beneficiaries must verify compliance with the work requirements and any changes in family income on a monthly basis;
  - c. Arizona may ban an eligible person from enrollment for one year if the eligible person knowingly failed to report a change in family income or made a false statement regarding compliance with the work requirements; and
  - d. Lifetime coverage for all able-bodied adults is limited to five years except for certain circumstances.
8. On February 2, 2017, the Board met and discussed whether Native Americans and Alaska Natives should be exempt from the Section 1115 Waiver Amendment (Attached as Exhibit B); and
  9. The FDIHB serves a population of 45,486 living within 16 chapters of the Navajo Nation, including four school districts and the Navajo Nation headquarters and serves individuals outside the service area at both facilities; and
  10. In 2015, FDIHB served 31,789 patients by providing 336,415 visits and, in 2016, the Emergency Department provided care for 28,645 visits; and
  11. According to the Arizona Rural Policy Institute (n.d.) 62.6% of the Navajo Nation population is over 19 years of age; and
  12. Approximately sixty (60) percent of the FDIHB service population receives Arizona Medicaid; and
  13. The per capita annual income in the FDIHB service area is \$9,993.75; and
  14. In 2014, the average cost for an outpatient Emergency Department visit was \$1,502, which equates to 15% of the total per capita annual income; and
  15. The unemployment rate of the Navajo Nation is 42%; and
  16. Many factors contribute to the high rate of unemployment on the Navajo Reservation including a lack of available jobs, proximity to roads, limited training and educational opportunities, lack of technology, including internet access, and lack of access to transportation; and
  17. The proposed Section 1115 Waiver Amendment’s requirement for “*all able-bodied adults to become employed or actively seek employment or attend school or a job training program*” will be difficult for many of FDIHB’s Navajo patients due to a lack of available jobs, the rural, sparsely populated and remote communities where roads become impassible during many months, and a lack of technology; and


18. The proposed Section 1115 Waiver Amendment's requirement that beneficiaries must "verify on a monthly basis compliance with the work requirements and any changes in family income;" and the State may ban "an eligible person from enrollment for one year if the eligible person knowingly failed to report a change in family income or made a false statement regarding compliance with the work requirements;" will also negatively affect the FDIHB service population because a lack of widely available technology, including the internet, and a lack of reliable transportation and the remote nature of the community, would create an undue burden for individuals who would be required to report their status on a monthly basis; and
19. The authority for AHCCCS to "limit lifetime coverage for all able-bodied adults to five years except for certain circumstances" will have a devastating impact on the Navajo Population that FDIHB serves. As a self-determined healthcare facility, FDIHB relies on third party reimbursements. The Indian Health Services does not provide FDIHB with adequate funding for the services and care that FDIHB patients require. Approximately 60% of patients are AHCCCS Medicaid. Consequently, the proposed Section 1115 Waiver Amendment will result in an estimated loss of \$11.5 million in the first year, and significant financial losses will continue in subsequent years; and
20. As a result of the proposed Section 1115 Waiver Amendment as currently written, FDIHB stands to lose \$11.5 million in revenue because it would be forced to significantly cut back on its patient services and the number of providers, which limits FDIHB's ability to provide the care the community needs and ultimately fulfill its stated Mission and Vision; and
21. The proposed Section 1115 Waiver Amendment will also result in an influx of patients to FDIHB's facilities because if the many Navajo who do not live on the Reservation lose their health care coverage due to the proposed Amendment, they will seek treatment at FDIHB's facilities which would unduly burden the organization; and
22. In similar circumstances, Native Americans and Alaska Natives have been exempted from AHCCCS waiver requirements; and
23. AHCCCS recognizes that Arizona will implement American Indian medical homes, "supporting the integration and coordination of care for American Indian AHCCCS enrollees in the American Indian Health Program (AIHP);" and
24. AHCCCS recognizes that "Significant health disparities exist between the AI/AN population and the general population of Arizona, including the average age of death (17.5 years lower for American Indians), and higher death rates from many preventable diseases."

**NOW THEREFORE BE IT RESOLVED THAT:**

1. FDIHB is opposed to the proposed Section 1115 Waiver Amendment unless it includes an exemption for Native Americans and Alaska Natives; and
2. Native Americans and Alaska Natives should be exempted from the proposed Section 1115 Waiver Amendment.

**CERTIFICATION**

At a duly called meeting of the Fort Defiance Indian Hospital Board, Inc. Board of Directors, where a quorum was present, the Board of Directors passed the above-referenced action by a vote of 8 in favor, 0 opposed, 0 abstained, on this 2<sup>nd</sup> day of February, 2017.



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Oscencio Tom, President  
FDIHB Board of Directors

Motion: Alex Montoya

Second: Dawn A. Yazzie



Arizona Section 1115 Waiver Amendment Request  
 Senate Bill 1092 Arizona Legislative Directives

## I. SUMMARY

As part of the 2015 legislative session, the Arizona State legislature passed Senate Bill 1092 requiring the Arizona Health Care Cost Containment System (AHCCCS) to request from the Center for Medicare and Medicaid Services (CMS) each year for a waiver or amendments to the current Section 1115 Waiver to allow the State to implement the following requirements for “able-bodied adults” receiving Medicaid services:

1. The requirement for all able-bodied adults to become employed or actively seek employment or attend school or a job training program.
2. The requirement for members to verify on a monthly basis compliance with the work requirement and any changes in family income.
3. The authority for AHCCCS to ban an eligible person from enrollment for one year if the eligible person knowingly failed to report a change in family income or made a false statement regarding compliance with the work requirement.
4. The authority for AHCCCS to limit lifetime coverage for all able-bodied adults to five years except for certain circumstances.

SB 1092 requires AHCCCS to request from CMS by March 30 of each year only the waivers or amendments to the current Section 1115 Waiver that have not been approved and are not in effect. Accordingly, AHCCCS seeks the following waiver authorities:

- **Waiver Authority**—Waiver from 1902(a)(10)(A) to enable the State to impose work requirements for “able-bodied adults”; require beneficiaries to verify on a monthly basis compliance with the work requirements and any changes in family income; enable the State to ban an eligible person from enrollment for one year if the eligible person knowingly failed to report a change in family income or made a false statement regarding compliance with the work requirements; and limit lifetime coverage for all able-bodied adults to five years except for certain circumstances.

## II. OVERVIEW

As part of the 2015 legislative session, the Arizona State legislature passed Senate Bill 1092 requiring the Arizona Health Care Cost Containment System (AHCCCS) to apply to CMS by March 30 of each year for waiver or amendments to the current Section 1115 Waiver to allow the State to implement new requirements for “able-bodied adults” receiving Medicaid services. SB 1092 specifically requires:

A. On or before March 30 of each year, the Director shall apply to the Centers for Medicare and Medicaid Services (CMS) for waivers or amendments to the current Section 1115 Waiver to allow this state to:

1. Institute a work requirement for all able-bodied adults receiving services pursuant to this article [Arizona Revised Statutes, Title 36, Chapter 29, Article 1 which includes Title XIX eligible individuals other than persons with an institutional level of need and the Medicare Cost Sharing groups]. The work requirement shall:
  - (a) Require an eligible person to either:
    - (i) Become employed.
    - (ii) Actively seek employment, which would be verified by the department.
    - (iii) Attend school or a job training program, or both, at least twenty hours per week.
  - (b) Require an eligible person to verify on a monthly basis compliance with requirements of subdivision (a) of this paragraph and any change in family income.
  - (c) Require the administration to confirm an eligible person's change in family income as reported under subdivision (b) of this paragraph and redetermine the person's eligibility under this article.
  - (d) Allow the administration to ban an eligible person from enrollment for one year if the eligible person knowingly failed to report a change in family income or made a false statement regarding compliance with the requirements of subdivision (a) of this paragraph.
  - (e) Allow for an exemption if a person meets any of the following conditions:
    - (i) Is at least nineteen years of age but is still attending high school as a full-time student.
    - (ii) Is the sole caregiver of a family member who is under six years of age.
    - (iii) Is currently receiving temporary or permanent long-term disability benefits from a private insurer or from the government.
    - (iv) Has been determined to be physically or mentally unfit for employment by a health care professional in accordance with rules adopted by the administration.
2. Place on able-bodied adults a lifetime limit of five years of benefits under this article that begins on the effective date of the waiver or amendment to the current section 1115 waiver and does not include any previous time a person received benefits under this article. The lifetime limit under this paragraph does not include any time during which the person meets any of the following conditions:
  - (a) Is pregnant.
  - (b) Is the sole caregiver of a family member who is under six years of age.



## Arizona Section 1115 Waiver Amendment Request Senate Bill 1092 Arizona Legislative Directives

### I. SUMMARY

As part of the 2015 legislative session, the Arizona State legislature passed Senate Bill 1092 requiring the Arizona Health Care Cost Containment System (AHCCCS) to request from the Center for Medicare and Medicaid Services (CMS) each year for a waiver or amendments to the current Section 1115 Waiver to allow the State to implement the following requirements for “able-bodied adults” receiving Medicaid services:

1. The requirement for all able-bodied adults to become employed or actively seek employment or attend school or a job training program.
2. The requirement for members to verify on a monthly basis compliance with the work requirement and any changes in family income.
3. The authority for AHCCCS to ban an eligible person from enrollment for one year if the eligible person knowingly failed to report a change in family income or made a false statement regarding compliance with the work requirement.
4. The authority for AHCCCS to limit lifetime coverage for all able-bodied adults to five years except for certain circumstances.

SB 1092 requires AHCCCS to request from CMS by March 30 of each year only the waivers or amendments to the current Section 1115 Waiver that have not been approved and are not in effect. Accordingly, AHCCCS seeks the following waiver authorities:

- **Waiver Authority**—Waiver from 1902(a)(10)(A) to enable the State to impose work requirements for “able-bodied adults”; require beneficiaries to verify on a monthly basis compliance with the work requirements and any changes in family income; enable the State to ban an eligible person from enrollment for one year if the eligible person knowingly failed to report a change in family income or made a false statement regarding compliance with the work requirements; and limit lifetime coverage for all able-bodied adults to five years except for certain circumstances.

### II. OVERVIEW

As part of the 2015 legislative session, the Arizona State legislature passed Senate Bill 1092 requiring the Arizona Health Care Cost Containment System (AHCCCS) to apply to CMS by March 30 of each year for waiver or amendments to the current Section 1115 Waiver to allow the State to implement new requirements for “able-bodied adults” receiving Medicaid services. SB 1092 specifically requires:

- (c) Is currently receiving temporary or permanent long-term disability benefits from a private insurer or from the government.
  - (d) Is at least nineteen years of age but is still attending high school as a full-time student.
  - (e) Is employed full time but continues to meet the income eligibility requirements under this article.
  - (f) Is enrolled before reaching nineteen years of age.
  - (g) Is an eligible person as defined in section 36-2901, paragraph 6, subdivision (a), item (iii).
3. Develop and impose meaningful cost-sharing requirements to deter both:
- (a) The nonemergency use of emergency departments.
  - (b) The use of Ambulance services for nonemergency transportation or when it is not medically necessary.
- B. In any year, the Director shall apply under subsection A of this section for only the waivers or amendments to the current section 1115 waiver that have not been approved and are not in effect.
- C. On or before April 1 of each year, the director shall submit a letter confirming the submission of the waiver requests required under subsection A of this section to the Governor, the President of the Senate and the Speaker of the House of Representatives.
- D. For the purposes of this section:
- 1. "Able-bodied" means an individual who is physically and mentally capable of working.
  - 2. "Adult" means an individual who is at least nineteen years of age. END\_STATUTE

Arizona Laws 2015, First Regular Session, Chapter 29, Article 1.

SB 1092 was passed during the First Regular Session of 2015. The bill was part of the public process at the Arizona State Legislature during the 2015 legislative session. On September 30, 2015, AHCCCS included the SB 1092 legislative directive as part of its 1115 waiver renewal application. AHCCCS conducted extensive stakeholder engagement prior to submitting the waiver application, and received numerous stakeholder comments through community forums held in Phoenix, Tucson, Flagstaff, Yuma, as well as through public meetings including State Medicaid Advisory Committee. For public comments see pages 458-479 of the PDF document: <https://azahcccs.gov/shared/Downloads/AZWaiverPackage.pdf>.

On September 30, 2016, CMS approved Arizona's request to impose copays for non-emergency use of the emergency room for Childless Adults with incomes 100-138% above the Federal Poverty Line (FPL), but rejected the other waiver requests per SB 1092—work requirements, additional verification requirements, and a time limit on coverage—on the grounds that those requests could undermine access to care and do not support the objective of the program.

SB 1092 legislative directive requires AHCCCS to reapply by March 30 of each year for only the waivers or amendments to the current Section 1115 Waiver that have not been approved and are not in effect. Accordingly, AHCCCS will reapply for the waivers listed in the table below.

Waiver Authority Requested	SB 1092 Requirements	Brief Description
<p><b>1902(a)(10)(A) and the regulations in 42 CFR Part 435 to the extent that those provisions set forth the exclusive list of eligibility requirements.</b></p>	<p>Work Requirement</p>	<p>Requires all able-bodied adults to become employed or actively seeking employment or attend school or a job training program.</p>
<p><b>1902(a)(17) to the extent that 42 C.F.R. 435.916 restricts the State from requiring beneficiaries to provide information.</b></p>	<p>Monthly Income and Work Requirement Verification</p>	<p>Requires members to verify on a monthly basis compliance with the work requirements and any changes in family income.</p>
<p><b>1902(a)(17) to the extent that 42 C.F.R. 435.916 restricts the State from redetermining eligibility more frequently than every 12 months</b></p>	<p>Monthly Redetermination of Eligibility</p>	<p>Permits the State to redetermine eligibility monthly based on the income and employment related information provided by beneficiaries.</p>
<p><b>1902(a)(10)(A) and the regulations in 42 CFR Part 435 to the extent that those provisions set forth the exclusive list of eligibility requirements.</b></p>	<p>Enrollee Disenrollment</p>	<p>Allows AHCCCS to ban an eligible person from enrollment for one year if the eligible person knowingly failed to report a change in family income or made a false statement regarding compliance with the work requirements.</p>



- (c) Is currently receiving temporary or permanent long-term disability benefits from a private insurer or from the government.
  - (d) Is at least nineteen years of age but is still attending high school as a full-time student.
  - (e) Is employed full time but continues to meet the income eligibility requirements under this article.
  - (f) Is enrolled before reaching nineteen years of age.
  - (g) Is an eligible person as defined in section 36-2901, paragraph 6, subdivision (a), item (iii).
3. Develop and impose meaningful cost-sharing requirements to deter both:
- (a) The nonemergency use of emergency departments.
  - (b) The use of Ambulance services for nonemergency transportation or when it is not medically necessary.
- B. In any year, the Director shall apply under subsection A of this section for only the waivers or amendments to the current section 1115 waiver that have not been approved and are not in effect.
- C. On or before April 1 of each year, the director shall submit a letter confirming the submission of the waiver requests required under subsection A of this section to the Governor, the President of the Senate and the Speaker of the House of Representatives.
- D. For the purposes of this section:
- 1. "Able-bodied" means an individual who is physically and mentally capable of working.
  - 2. "Adult" means an individual who is at least nineteen years of age. END\_STATUTE

Arizona Laws 2015, First Regular Session, Chapter 29, Article 1.

SB 1092 was passed during the First Regular Session of 2015. The bill was part of the public process at the Arizona State Legislature during the 2015 legislative session. On September 30, 2015, AHCCCS included the SB 1092 legislative directive as part of its 1115 waiver renewal application. AHCCCS conducted extensive stakeholder engagement prior to submitting the waiver application, and received numerous stakeholder comments through community forums held in Phoenix, Tucson, Flagstaff, Yuma, as well as through public meetings including State Medicaid Advisory Committee. For public comments see pages 458-479 of the PDF document: <https://azahcccs.gov/shared/Downloads/AZWaiverPackage.pdf>.

On September 30, 2016, CMS approved Arizona's request to impose copays for non-emergency use of the emergency room for Childless Adults with incomes 100-138% above the Federal Poverty Line (FPL), but rejected the other waiver requests per SB 1092—work requirements, additional verification requirements, and a time limit on coverage—on the grounds that those requests could undermine access to care and do not support the objective of the program.

1902(a)(10)(A) and the regulations in 42 CFR Part 435 to the extent that those provisions set forth the exclusive list of eligibility requirements.

5 year limit

Places all able-bodied adults on a lifetime limit of five years with exceptions for certain circumstances.

AHCCCS is also requesting that CMS allow the State to gather information needed to determine whether or not the work requirements and lifetime limits apply as part of the application process pursuant to 42 CFR 435.907.

### III. PUBLIC PROCESS

Pursuant to the Special Terms and Conditions (STC) that govern Arizona's 1115 Waiver, Arizona must provide documentation of its compliance with the Demonstration of Public Notice process (42 CFR §431.408), as well as document that the tribal consultation requirements outlined in STC 15 have been met.

SB 1092 was passed during the First Regular Session of 2015. The bill was part of the public process at the Arizona State Legislature. Information about the legislation can be found on the legislative website at the following link: <https://apps.azleg.gov/BillStatus/BillOverview/66346>.

The amendment request was posted on the AHCCCS website for public comment and can be found here:

<https://azahcccs.gov/Resources/Federal/sb1092legislativeDirectiveWaiverProposal.html>.

A public notice of the waiver amendment was posted in *the Arizona Republic*, the newspaper of widest circulation in Arizona on January 12, 2017 allowing for over a 30 day comment period. The notice included a brief summary of the waiver request, the locations, dates and times of the public hearings, instructions on how to submit comments and a link to where additional information can be found. See following link for the public notice: <https://azahcccs.gov/Resources/Federal/sb1092legislativeDirectiveWaiverProposal.html>.

AHCCCS will present the details about the SB 1092 waiver request in tribal consultation, as well as public hearings in Phoenix, Flagstaff, and Tucson. The public hearing meetings will have telephonic conference capabilities to ensure statewide accessibility. Public comments will be posted on the AHCCCS website.

### IV. DATA ANALYSIS: "WITH WAIVER" VS. "WITHOUT WAIVER"

The imposition of work requirements, additional verification requirements, and time limits on coverage as stated in the proposal will have a positive effect on budget neutrality.

## V. ALLOTMENT NEUTRALITY

Not applicable. The amendment does not impact the XXI population.

## VI. DETAILS

### A. Proposed Additional Eligibility Requirements under the Demonstration as Amended.

The work requirements in SB 1092 apply to all able-bodied individuals 19 years of age or older ("able-bodied adults") otherwise eligible for Medicaid except for individuals who meet any of the following conditions:

- Individuals enrolled in the Arizona Long Term Care System (i.e., persons with an institutional level of need).
- Individuals eligible for Medicare Cost Sharing (i.e., persons eligible for Medicare and Medicaid, Qualified Medicare Beneficiaries, Specified Low Income Medicare Beneficiaries, and Qualified Individuals).
- Is at least nineteen years of age but is still attending high school as a full-time student.
- Is the sole caregiver of a family member who is under six years of age.
- Is currently receiving temporary or permanent long-term disability benefits from a private insurer or from the government.
- Has been determined to be physically or mentally unfit for employment by a health care professional in accordance with rules adopted by the administration.

The five-year maximum lifetime coverage limit applies to all able-bodied adult beneficiaries except those subject to the exceptions above. The lifetime coverage will be effective on the date of waiver or amendment is approved by CMS and does not include previous times a person received Medicaid benefits. Furthermore, lifetime limit under SB 1092 does not include any time during which the person meets any of the following conditions:

- Is pregnant.
- Is the sole caregiver of a family member who is under six years of age.
- Is currently receiving temporary or permanent long-term disability benefits from a private insurer or from the government.
- Is at least nineteen years of age but is still attending high school as a full-time student.
- Is employed full time but continues to meet the income eligibility requirements under this article.
- Is enrolled before reaching nineteen years of age.
- Under twenty-six years of age and who was in the custody of the department of child safety pursuant to title 8, chapter 4 when the person became eighteen years of age.

**1902(a)(10)(A) and the regulations in 42 CFR Part 435 to the extent that those provisions set forth the exclusive list of eligibility requirements.**

5 year limit

Places all able-bodied adults on a lifetime limit of five years with exceptions for certain circumstances.

AHCCCS is also requesting that CMS allow the State to gather information needed to determine whether or not the work requirements and lifetime limits apply as part of the application process pursuant to 42 CFR 435.907.

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AHCCCS will present the details about the SB 1092 waiver request in tribal consultation, as well as public hearings in Phoenix, Flagstaff, and Tucson. The public hearing meetings will have telephonic conference capabilities to ensure statewide accessibility. Public comments will be posted on the AHCCCS website.

### **IV. DATA ANALYSIS- "WITH WAIVER" VS. "WITHOUT WAIVER"**

The imposition of work requirements, additional verification requirements, and time limits on coverage as stated in the proposal will have a positive effect on budget neutrality.

B. Proposed Cost Sharing Requirements under the Demonstration as Amended. The cost sharing requirements for persons impacted by this proposed demonstration amendment will not change from the State's current program features as described in the current State Plan and Demonstration.

C. Proposed Changes to the Delivery System under the Demonstration as Amended.

The delivery system for persons impacted by this proposed demonstration amendment will not vary from the State's current program features as described in the current State Plan and Demonstration.

D. Proposed Changes to benefit coverage under the Demonstration as Amended.

The benefit coverage for persons impacted by this proposed demonstration amendment will not vary from the State's current program features as described in the current State Plan and Demonstration.

## VII. EVALUATION DESIGN

A. Research Hypothesis, Goals, and Objectives. The demonstration will test whether authorizing work requirements and life time coverage limits for "able-bodied adults" enrolled in AHCCCS will increase employment rate for those beneficiaries. The goal is to reduce individual reliance on public assistance. The objectives include increasing the number of beneficiaries with earned income and/or the capacity to earn income, reduce enrollment, and reduce the amount of "churn" (individuals moving on and off assistance repeatedly) as the result of greater access to employment and employer-sponsored health insurance or health insurance through the Exchange.

B. Plan for Testing the Hypothesis.

AHCCCS is proposing to test a series of hypotheses that will allow the state to: 1) evaluate its success in achieving the overall goals of the demonstration; and 2) identify opportunities for improvement to strengthen the demonstration. The table below outlines the proposed hypotheses for this demonstration and potential performance measures that would allow AHCCCS to effectively test each of the specific hypotheses:

Proposed Hypotheses	Proposed Performance Measure
The implementation of the work requirement will increase the rate of "able-bodied adults" that are employed, or actively seeking employment, or engaged in training.	<ul style="list-style-type: none"> <li>• The percentage of "able-bodied adults" enrolled in AHCCCS who become employed during the demonstration period.</li> <li>• The percentage of "able-bodied adults" enrolled in AHCCCS that are actively seeking employment during the demonstration period.</li> </ul>

	<ul style="list-style-type: none"> <li>• The percentage of “able bodied adults” enrolled in AHCCCS that are attending school or a job training program, or both, at least twenty hours per week during the demonstration period.</li> </ul>
<p>“Able bodied adults” who lose eligibility due to the five-year maximum lifetime coverage limit will not increase over the course of the demonstration.</p>	<ul style="list-style-type: none"> <li>• The percentage of “able bodied adults” enrolled in AHCCCS over the demonstration period.</li> <li>• The percentage of “able bodied adults” disenrolled from AHCCCS due to five-year maximum lifetime coverage limit.</li> </ul>
<p>“Able bodied adults” who lose eligibility due to failure to report a change in family income or making a false statement regarding compliance with the work requirements will not increase over the course of the demonstration.</p>	<ul style="list-style-type: none"> <li>• The percentage of “able bodied adults” that are disenrolled from AHCCCS for failing to report a change in family income or making a false statement regarding compliance with the work requirements.</li> </ul>

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B. Proposed Cost Sharing Requirements under the Demonstration as Amended. The cost sharing requirements for persons impacted by this proposed demonstration amendment will not change from the State's current program features as described in the current State Plan and Demonstration.

C. Proposed Changes to the Delivery System under the Demonstration as Amended.

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# The Impact of Arizona's 1115 Waiver Request

White Paper



**TSÉHOOTSOOÍ**  
*Medical Center*

*A facility of Fort Defiance Indian Hospital Board, Inc.*



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# The Impact of Arizona's 1115 Waiver Request

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## White Paper

### Foreword

The Fort Defiance Indian Hospital Board is adamantly opposed to including Native Americans and Alaska Natives in Arizona Section 1115 Waiver Amendment Request Senate Bill 1092 Arizona Legislative Directives.

By including Native Americans and Alaska Natives in the implementation of the requirement for all able-bodied adults to become employed or actively seek employment or attend school or a job training program, the requirement for members to verify on a monthly basis compliance with work requirement and any changes in family income, the authority for AHCCCS to ban an eligible person from enrollment for one year if the eligible person knowingly failed to report a change in family income or made a false statement regarding compliance with the work requirement, and most devastatingly the authority for AHCCCS to limit lifetime coverage for all able-bodied adults to five years we will see a bigger disparity between the health of Natives and the general population of Arizona than what already exists.

Our fear is that these amendments will cause such a loss in revenue that we will not be able to provide the services necessary to our community. We understand that these restrictions will create a huge savings for the state of Arizona, however, the cost is greater than any dollar amount.

# The Impact of Arizona's 1115 Waiver Request

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We urge you to exempt Native Americans and Alaska Natives from this waiver so tribal healthcare facilities can continue to provide the much needed services to this population.

Thank you,

FDIHB Board of Directors

## **Executive Summary**

The Native population is a vulnerable population. Many native patients are living in poverty and suffer from preventable diseases due to the lack of resource and access to healthcare. The unemployment rate is high among Natives and there is a huge disparity in healthcare between Natives and the non-Native population.

This white paper describes the background of the Fort Defiance Indian Hospital Board, the economic situation in our service area, and the demographics and living conditions of the patients we serve. This paper will provide you with a clear understanding of the challenges to the proposed waiver request and the devastating impact these amendments would have on our patients and our facility.

## **Introduction/Background**

The Fort Defiance Indian Hospital Board, Inc. (FDIHB) is a PL-93-638 organization that manages and operates Tséhootsooí Medical Center (TMC) and Naháta'dzítíl Health Center (NDHC). TMC is a 56 bed hospital that offers inpatient, outpatient, emergency, and specialty services. TMC is located in Fort Defiance, AZ on the Navajo Reservation. NDHC is located in Sanders, AZ and provides outpatient services to the community. FDIHB has a service population of 45,486 living within 16 chapters. Our service area includes four school districts and the Navajo Nation Headquarters. In addition to this population, we also have patients from outside our service area who receive care at our facilities. As of January 30, 2017, nearly 60 percent of our patients receive Arizona Medicaid.

FDIHB became a self-determined healthcare organization in 2010 and is overseen by a 10 member Board of Directors. Our mission is "To provide superior and compassionate

We urge you to exempt Native Americans and Alaska Natives from this waiver so tribal healthcare facilities can continue to provide the much needed services to this population.

Thank you,

FDIHB Board of Directors



healthcare to our community by raising the level of health, Hózhó, and quality of life". Our vision is "Harmoniously uniting communities by engaging customers in healthy lifestyles".

As a self-determined organization we rely on third party reimbursement to provide the services that our community needs. We are concerned that the inclusion of Native Americans and Alaska Natives in the waiver request to CMS will significantly reduce our revenue and could have a devastating impact on our ability to provide care to our community.

In 2015 FDIHB served 31,789 patients by providing 336,415 visits. In 2016 our Emergency Department provided care for 28,645 visits.

According to the Arizona Rural Policy Institute (n.d.) 62.6% of the Navajo Nation population is over 19 years of age. This is a significant number of people who would potentially be impacted by the 5 year life-time limit of Medicaid coverage.

Our region is plagued by poverty and unemployment. The income per capita in our service area is \$9,993.75. According to an article in the Journal of Healthcare for the Poor and Underserved (2014), the average cost for an outpatient Emergency Department visit was \$1,502. This equates to 15% of our patients' income. Patients without insurance coverage will either chose not to receive care or they will receive care, not pay the bill, and increase the bad debt of the hospital.

According to Partners in Health, the unemployment rate on the Navajo nation is 42%. There are many factors contributing to this including lack of available jobs; proximity to main roads; limited training and educational opportunities; lack of technology, such as internet; lack of access to transportation; and impassible roads, especially during rainy and snowy seasons.

## **Challenges to the proposed waiver request**

***The requirement for all able-bodied adults to become employed or actively seek employment or attend school or a job training program***

This requirement will be difficult for many of our Navajo patients. Due to the lack of available jobs, there are few opportunities for our community members. We also have the added challenge of location. Many of our patients live in very remote areas and their roads become impassible during the winter months. It is difficult to maintain a job if you cannot even leave your driveway. Lack of technology also this makes this requirement very difficult to obtain.

***The requirement for member to verify on a monthly basis compliance with work requirements and any changes in family income.***

***The authority for AHCCCS to ban an eligible person from enrollment for one year if that eligible person knowingly failed to report a change in family income or made a false statement regarding compliance with the work requirement.***

These two requirements are challenging for our patients to meet because of the lack of technology and transportation. A small percentage of our patients have access to the internet which makes it difficult to report their status on a monthly basis. We also again run into the problem of many of our patients living in areas with impassible roads during snow and rain. When the roads are impassible, it is impossible for them to get into town. Due to the poverty, even if people have transportation, they often cannot afford gas, food, or any other expenses to leave the home.

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According to Partners in Health, the unemployment rate on the Navajo nation is 42%. There are many factors contributing to this including lack of available jobs; proximity to main roads; limited training and educational opportunities; lack of technology, such as internet; lack of access to transportation; and impassible roads, especially during rainy and snowy seasons.

*The authority for AHCCCS to limit lifetime coverage for all able-bodied adults to five years except for certain circumstances.*

Implementing a 5 year life time limit will have a devastating impact on the Navajo Population that we serve. As a self-determined healthcare facility we rely on third party reimbursement. The fact is that Indian Health Services does not provide us with enough funding to provide the services and care that our patients need. 60% of our payer mix is AHCCCS Medicaid. We are estimating that the impact this will have on our facility is a loss of more than \$11.5 million in the first year that we see patients being kicked off of Medicaid. We will continue to see a loss in revenue year after year.

The loss of \$11.5 million is a substantial loss and could result in the need for the facility to cut services and providers, limiting our ability to provide the care our community needs.

This could also cause an influx of patients. Currently there are many Navajos living off the reservation who receive their care where they live. If they no longer have health care coverage and are not able to receive care in the cities, they will come back to the reservation for their care burdening an already thinly stretched system.

### **Recommendations**

- Exempt American Indians and Alaska Natives from this waiver

The FDIHB Board of Directors recommends that Native Americans and Alaska Natives be exempt from the waiver rules that Arizona AHCCCS is trying to put into place. It is unusual for Native Americans and Alaska Natives not to be an exemption. When AZ ACCCHS requested a waiver in September of 2016 the Centers for Medicare and Medicaid Services responded that American Indians are exempt from the

applicability of fee for service upper payment limits and coinsurance and premium contribution requirements. We recommend that AZ AHCCCS follow the precedence that has been set and exempt American Indians.

The reply from CMS also calls for the implementation of American Indian medical homes, “supporting the integration and coordination of care for American Indian AHCCCS enrollees in the American Indian Health Program” (Wachino, 2017). This would include greater care coordination and reimbursement for such coordination. This appears to be a contradiction. This would allow for greater access to care and services provided yet the current waiver request to limit able-bodied adults to a 5 year life time limit will result in less access to care.

In your own document, Proposing the American Indian Medical Home (Final Draft) you state, “Significant health disparities exist between the AI/AN population and the general population of Arizona, including the average age of death (17.5 years lower for American Indians), and higher death rates from many preventable diseases” (Arizona Health Care Cost Containment System, 2016). By including American Indians in this waiver the health disparities will be even greater and there will be more preventable deaths of Native Americans and Alaska natives every year.

- Hold public hearing in rural areas

Fourteen percent of the American population lives in rural areas and none of the public hearings were held in rural areas. Furthermore, according to the Bureau of Indian Affairs, 27.7% of the land in Arizona is tribal land and none of the public hearings were located on tribal land. The FDIHB board of directors recommends that the rural and tribal communities be included and considered when conducting public hearings.

*The authority for AHCCCS to limit lifetime coverage for all able-bodied adults to five years except for certain circumstances.*

Implementing a 5 year life time limit will have a devastating impact on the Navajo Population that we serve. As a self-determined healthcare facility we rely on third party reimbursement. The fact is that Indian Health Services does not provide us with enough funding to provide the services and care that our patients need. 60% of our payer mix is AHCCCS Medicaid. We are estimating that the impact this will have on our facility is a loss of more than \$11.5 million in the first year that we see patients being kicked off of Medicaid. We will continue to see a loss in revenue year after year.

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## Conclusion

While we understand the financial impact these amendments will have on the state of Arizona, the impact they will have on the Native American population will be devastating. We will see a decreased use of medical services, an increase in poorly managed chronic health conditions, and an increase in preventable deaths if this waiver is granted. There will also be a negative impact on our revenue which in turn will likely cause us to have to decrease services offered which will consequently negatively impact the health of our patients. The amendments proposed will create a downward spiral leading to death of patients and the destruction of many healthcare facilities. The Fort Defiance Indian Hospital Board of Directors strongly urges AZ AHCCCS to exempt Native Americans and Alaska Natives from these amendments and we strongly urge CMS to deny this waiver.

## References

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## **Conclusion**

While we understand the financial impact these amendments will have on the state of Arizona, the impact they will have on the Native American population will be devastating. We will see a decreased use of medical services, an increase in poorly managed chronic health conditions, and an increase in preventable deaths if this waiver is granted. There will also be a negative impact on our revenue which in turn will likely cause us to have to decrease services offered which will consequently negatively impact the health of our patients. The amendments proposed will create a downward spiral leading to death of patients and the destruction of many healthcare facilities. The Fort Defiance Indian Hospital Board of Directors strongly urges AZ AHCCCS to exempt Native Americans and Alaska Natives from these amendments and we strongly urge CMS to deny this waiver.



# THE NAVAJO NATION

**RUSSELL BEGAYE PRESIDENT**  
**JONATHAN NEZ VICE PRESIDENT**

February 28, 2017

Thomas J. Betlach, Director  
Arizona Health Care Cost Containment Systems  
(AHCCCS)  
801 E. Jefferson St.  
Phoenix, AZ 85034

VIA EMAIL: [PublicInput@azahcccs.gov](mailto:PublicInput@azahcccs.gov)

**Regarding: Arizona Section 1115 Waiver Amendment Senate Bill 1092 on AHCCCS and Center for Medicare and Medicaid Services (CMS)**

Dear Mr. Betlach:

On behalf of the Navajo Nation, I appreciate the process to consult between the Tribal Leaders and AHCCCS on the annual request to CMS. The following are our concerns and recommendations on the State's proposed new requirements for "able-bodied adults" receiving Medicaid services on the SB 1092 [Arizona Revised Statutes, Title 36, Chapter 29, Article 1 which includes Title XIX eligible individuals other than persons with an institutional level of need and the Medicare Cost Sharing group]:

Proposed Amendment Requirements	Concerns or Questions	Recommendations
The requirement for members to verify on a monthly basis compliance with the work requirement and any changes in family income.	Requirement may present additional challenge to the AHCCCS member to comply and remain eligible for this benefit.	Consider "bi-monthly" or "quarterly" basis to reduce the administrative burden to both AHCCCS & the AHCCCS member.
The authority for AHCCCS to ban an eligible person from enrollment for one year if the eligible person knowingly failed to report a change in family	The objective of the AHCCCS program includes access to care to a vulnerable population.  A ban for one year because of this requirement undermines access to care.  How would AHCCCS evaluate and	Consider the unemployment rate & inequity of social determinates many of the vulnerable population and eligible individuals encounter.

income or made a false statement regarding compliance with the work requirement.	determine “if the eligible person knowingly failed...” to comply. What if the eligible person just cannot meet this requirement because of their vulnerable state?	Consider a different penalty that would not impact access to care.
The authority for AHCCCS to limit lifetime coverage for all able-bodied adults to five years except for certain circumstances.	The Navajo Nation is concerned to place a lifetime limit of service up to five years. Many individuals and families experience multi-generational poverty or low economic income. Many contributing factors including social determinates of vulnerable populations live in high risk environments where their need to access healthcare is greatest. Five years is such a short period of time when viewed over a lifespan. CMS rejected last year’s proposed requirement in 2016 because it undermines access to care.	Exempt American Indian & Alaska Native from this requirement.  To allow AI/AN to remain on AHCCCS with no lifetime limit coverage to five years and base on the eligibility even if beyond five years.

Thank you again for the opportunity to make comments and recommendations on this important AZ Section 1115 Waiver Amendment request to CMS. For additional information please contact Ramona Antone Nez, Acting Executive Director, Navajo Department of Health at (928) 871-6350 or email at [ramona.nez@nndoh.org](mailto:ramona.nez@nndoh.org).

Sincerely,

**THE NAVAJO NATION**



Russell Begaye, *President*

CC: Jonathan Hale, Chair, Health, Education, and Human Services Committee, 23<sup>rd</sup> Navajo Nation Council  
Lorenzo Bates, Speaker, 23<sup>rd</sup> Navajo Nation Council  
Ramona Antone Nez, Acting Executive Director, Navajo Department of Health  
File



# THE NAVAJO NATION

**RUSSELL BEGAYE PRESIDENT**  
**JONATHAN NEZ VICE PRESIDENT**

February 28, 2017

VIA EMAIL: [PublicInput@azahcccs.gov](mailto:PublicInput@azahcccs.gov)

Thomas J. Betlach, Director  
 Arizona Health Care Cost Containment Systems (AHCCCS)  
 801 E. Jefferson St.  
 Phoenix, AZ 85034

Regarding: Arizona Section 1115 Waiver Amendment Senate Bill 1092 on AHCCCS and Center for Medicare and Medicaid Services (CMS)

Dear Mr. Betlach:

On behalf of the Navajo Department of Health, I appreciate the process to consult between the Tribal Leaders and AHCCCS on the annual request to CMS. The following are our concerns and recommendations on the State's proposed new requirements for "able-bodied adults" receiving Medicaid services on the SB 1092 [Arizona Revised Statutes, Title 36, Chapter 29, Article 1 which includes Title XIX eligible individuals other than persons with an institutional level of need and the Medicare Cost Sharing group]:

Proposed Amendment Requirements	Concerns or Questions	Recommendations
The requirement for members to verify on a monthly basis compliance with the work requirement and any changes in family income.	Requirement may present additional challenge to the AHCCCS member to comply and remain eligible for this benefit.	Consider "bi-monthly" or "quarterly" basis to reduce the administrative burden to both AHCCCS & the AHCCCS member.
The authority for AHCCCS to ban an eligible person from enrollment for one year if the eligible person knowingly failed to report a change in family income or made a false statement regarding compliance with the work requirement.	The objective of the AHCCCS program includes access to care to a vulnerable population.  A ban for one year because of this requirement undermines access to care.  How would AHCCCS evaluate and determine "if the eligible person knowingly failed..." to comply. What if the eligible person just cannot meet this requirement because of their vulnerable state?	Consider the unemployment rate & inequity of social determinates many of the vulnerable population and eligible individuals encounter.  Consider a different penalty that would not impact access to care.
The authority for AHCCCS to limit lifetime coverage for all able-bodied adults to five years except for certain circumstances.	The Navajo Nation is concerned to place a lifetime limit of service up to five years. Many individuals and families experience multi-generational poverty or low economic income.  Many contributing factors including social determinates of vulnerable populations live in high risk environments where their need to access	Exempt American Indian & Alaska Native from this requirement.  To allow AI/AN to remain on AHCCCS with no lifetime limit coverage to five years

	healthcare is greatest. Five years is such a short period of time when viewed over a lifespan. CMS rejected last year's proposed requirement in 2016 because it undermines access to care.	and base on the eligibility even if beyond five years.
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Thank you again for the opportunity to make comments and recommendations on this important AZ Section 1115 Waiver Amendment request to CMS. For additional information please contact me at (928) 871-6350 or email at [ramona.nez@ndoh.org](mailto:ramona.nez@ndoh.org).

Respectfully,



Ramona Antone Nez, MPH, BSN  
Acting Executive Director  
Navajo Department of Health

CC: Russell Begaye, *President*, The Navajo Nation  
Jonathan Nez, *Vice President*, The Navajo Nation  
Jonathan Hale, *Chair*, Health, Education, and Human Services Committee, 23<sup>rd</sup> Navajo Nation Council  
Lorenzo Bates, *Speaker*, 23<sup>rd</sup> Navajo Nation Council  
File

**From:** [Victoria D. Began](#)  
**To:** [Public Input](#); [Betlach, Tom](#)  
**Subject:** Demonstration Waiver - 1115  
**Date:** Monday, February 27, 2017 7:57:15 PM  
**Attachments:** [image001.gif](#)  
[image003.jpg](#)

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**Dear Mr. Betlach,**

**As the CEO for San Carlos Apache Healthcare Corporation I am respectfully requesting and asking AHCCCS to exempt all American Indians from Arizona's 1115 Demonstration Waiver. The reasons for include the following:**

- 1. Ignores History.** Tribal members in Arizona will be severely and adversely impacted with the state placing a lifetime limit of five years of Medicaid benefits on all able-bodied adults. SB1092 did recognize that some segments of the population are most vulnerable, and certain exemptions were provided under subparagraph A.R.S. 36-2903.09(e). However, none of these include American Indian or Alaska Natives who face historically adverse socio-economic forces.
- 2. Ignores reservation locations.** Most tribal members in Arizona live on very remote, rural reservations, in dire poverty largely due to the absence of meaningful employment and educational opportunities. For our Tribe, in example, 11,764 (74%) of our members live on the Reservation. Of those residing on the Reservation, 7,863 (67%) are employable (16 to 64 years of age) and of these only 32% are employed by either the Tribe or its economic development subsidiaries. Another 2,010 (17%) receive some sort of federal cash assistance benefits (174 ALTCS, 2,010 TANF, 384 SNAP Food Stamps), while the remainder either may work off-Reservation or have no regular employment. By contrast, in 2016, upon the reduction of TANF benefits to 12 months, the average monthly number of cases in Arizona was 10,192 for a total of 22,171 recipients.
- 3. Capping Medicaid ignores trust responsibility of U.S.** In the face of these economic statistics and the absence of meaningful employment opportunities, capping Medicaid eligibility cannot be considered "innovative" by CMS; instead, the cap will effectively block members of the Tribe from receiving healthcare. Moreover, SCAHC depends upon Medicaid as well as Medicare and the Children's Health Insurance Program, and the cap will effectively reduce this resource. Finally, if instituted, the cap would in effect breach the United States trust obligation to provide healthcare in perpetuity to all American Indians and Alaska Natives, an obligation that stems from all that the tribes have sacrificed for the creation of this great country.
- 4. Ignores Pass Through Structure.** Medicaid dollars for American Indians are a pass through for tribal members. Under section 1905(b) of the Social Security Act, the federal government is required to match state expenditures at the Federal Medical Assistance Percentage (FMAP) rate, which is 100 percent for state expenditures on behalf of AI/AN Medicaid beneficiaries for covered services "received through" an Indian Health Service facility whether operated by the Indian Health Service or by a Tribe or Tribal organization (as defined in section 4 of the Indian Health Care Improvement Act)." If services are not "received through" an IHS/Tribal facility, the federal government will match the state's payment for the services at the state's regular

FMAP rate, which in FY 2016 ranges from 50.00 percent to 74.17 percent.

5. **Cost-Sharing.** The current Demonstration Waiver requires that the AHCCCS develop and impose cost-sharing requirements on Medicaid beneficiaries. SB 1092 required that they apply as follows:

A. The cost-sharing exemptions pursuant to federal laws apply to American Indians and Alaska Natives in the AHCCCS system. These are pursuant to the American Recovery and Reinvestment Act (Public Law 111-5, Section 5006), the IHCA, as amended by Public law 111-148, Sections 10221(a), 1402, 1415, and 3309.

**Summary:** Taken together, **rejecting the provisions of** proposed Demonstration Waiver will recognize the historical, socio-economic barriers that American Indians continue to face, while preserving the trust obligation of the United States to provide healthcare to all American Indians and Alaska Natives in Arizona, including the members of the San Carlos Apache Tribe.

If you have any questions please feel free to contact me. Thank you for your time and attention to this critical issue.

Sincerely,

*Vicki*

Vicki Began, RN, MN  
Chief Executive Office  
San Carlos Apache Healthcare Corporation  
103 Medicine Way Road, Peridot, AZ 85542  
P: 928.475.1208  
C: 520-370-7096  
[victoria.began@scahealth.org](mailto:victoria.began@scahealth.org) | <http://www.scahealth.org/>

scahc-final-md



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**February 27, 2017**

**AHCCCS**

c/o Office of Intergovernmental Relations  
801 E. Jefferson Street, MD 4200  
Phoenix, AZ 85034  
Via Email: [publicinput@azahcccs.gov](mailto:publicinput@azahcccs.gov)

Dear Mr. Betlach,

I have been involved in health public policy since the initial legislative effort to establish AHCCCS. I have had roles as a community advocate and as staff to the Arizona State Senate. In those roles and as a resident of Arizona, it is with great concern that I write regarding the Section 1115 waiver under consideration following the enactment of SB 1092 in 2015.

Here are the requirements I am concerned about:

**The requirement for all able-bodied adults (ABA) to become employed or actively seeking employment or attend school or a job training program.**

1. While this is an admirable and desired goal, this is a mandate to your AHCCCS members **without** any new resources to assist those members in achieving the goal. It seems to me that if Arizona was ever serious about the need to assure that individuals on public benefits were able to secure employment, it would have occurred before July 2016 when 1,400 families lost TANF benefits because of the newly imposed twelve-month limit. That didn't happen. How will Arizona respond to this new mandate? The reality of the Arizona economy is that, as a state, we are very dependent upon the service sector which is greatly impacted by changing economic tides beyond the control of those affected. Individuals are subject to the regional differences in available employment evidenced by the wide variance in unemployment rates between rural and urban counties. Additionally, we're becoming an "on-time" or "gig economy," wherein employees often experience fluctuations in the number of hours they can secure from their employer: as few as 10 hours some weeks; full-time at others. Few private employers provide short or long term disability insurance and workers who become disabled often face months of delay in becoming eligible for the federal disability programs of SSI or SSDI.
2. The exemptions that have been identified fail to recognize the value of caregiving needed for a minor child over the age of six or for other family members such as a disabled spouse, sibling or elderly parents.
3. Data from the 2015 report "Distribution of the Nonelderly with Medicaid by Family Work Status, published by The Henry J. Kaiser Family Foundation, shows that 79% of the households in Arizona on AHCCCS had a family member working full or part-time. The assumption that individuals aren't working is demonstrably false. We need to acknowledge that people are working and trying to become self-sufficient.
4. There is no clear definition of 'able-bodied' contained in the statute and increasingly there is a reluctance by medical providers to complete the necessary documentation to determine disability.

5. Additionally, we know that some illnesses are episodic in nature, with periods of stability with few health care needs, followed by an intense need for care which, if not provided, could have long term adverse impacts on the individual. Let's celebrate the recovery episodes and intervene when health care is needed.

**The requirement for able-bodied adults to verify on a monthly basis compliance with the work requirements and any changes in family income.**

1. This new requirement presents major challenges to the AHCCCS administration and to your individual members. How will the AHCCCS member be assured that s/he has submitted the required information in a timely manner? As discussed above, there can be wide unpredictable variance between the hours the individual works one month compared to another month. There will need to be a **significant** education effort to assure that members understand what's required and how to timely meet these new demands. The requirement fails to recognize the stress and hassles the individual and his/her family may experience as they deal with meeting month's bills, juggling possibly varying work hours of work, and meeting the needs of their family.

**The authority for AHCCCS to ban an eligible person from enrollment for one year if the eligible person knowingly failed to report a change in family income or made a false statement regarding compliance with the work requirements.**

1. As indicated in the earlier discussion about fluctuations in income because of the service or gig economy they are engaged in, the assumption that the failure to report or to properly report was an intentional false statement is frankly intolerable and unwise. Obviously, the health care needs will remain and will impact not only the adult members of the household but also the children in those households. The need for ER usage will climb, and uncompensated care will again increase.

**The request to impose a 5-year lifetime coverage for all able-bodied adults.**

1. This is an unrealistic proposition and unattainable. How will AHCCCS accurately account for the "months on" benefits and "months off" benefits for several years to come? Will months when an individual lives in another state count towards those lifetime limits? What happens when it's time to **discontinue** benefits and the AHCCCS members request an accounting of months, and request a comparison with medical records showing a hospital stay, ER usage or ongoing therapy but no doctor provided attestation that the individual was not able-bodied? If individuals learn they have to "hoard" their months, will this change usage patterns and result in avoidance of health care until the situation is acute and more costly? How will months when an individual has a severe flu bout or an auto accident resulting in an inability to work, at least temporarily, be accounted for?
2. When the 60-month limit tolls and the individual is terminated from AHCCCS, won't there still possibly be ongoing health care needs? How will the community respond to someone in the midst of chemotherapy or ongoing care for a transplant? Medical care will still be delivered and costs will be shifted to the uncompensated care category again and ultimately to the full community.

As an Arizona taxpayer and long-time health care advocate, I implore the Center for Medicare and Medicaid Services to reject the proposed Section 1115 waiver as outlined in the submittal from Arizona's AHCCCS program. It does not address the significant administrative and educational barriers outlined

above, nor does it further the overall well-being of enrolled members or of the whole of the Arizona health care community. The proposal to impose a 5-year lifetime ban is simply contrary to the intent of the Medicaid program and should not be accepted. A simple "No!" is the best response to this request.

Sincerely,

A handwritten signature in cursive script that reads "Eddie L. Sissons". The signature is written in black ink and is positioned below the word "Sincerely,".

Eddie L. Sissons, C.P.M.  
Research Advisory Services, Inc.  
5631 N. 6<sup>th</sup> Street  
Phoenix, AZ 85012

**RESOLUTION OF THE WINSLOW INDIAN HEALTH CARE CENTER**

**A RESOLUTION OPPOSING ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) WAIVERS SUBMITTED TO THE CENTERS OF MEDICAID AND MEDICARE SERVICES (CMS) PURSUANT TO SENATE BILL (SB) 1092 THAT NEGATIVELY IMPACT ACCESS TO HEALTH CARE SERVICES FOR THE AMERICAN INDIAN POPULATION IN ARIZONA**

**WHEREAS:**

1. The Winslow Indian Health Care Center (“WIHCC”) is a non-profit corporation chartered under Navajo Nation law and sanctioned and authorized by the Navajo Nation Council as a “Tribal Organization” in Resolution No. CJY-33-10 to operate the federally funded health care programs, services, functions and activities in and near the eight chapters of Leupp, Bird Springs, Teesto, White Cone, Dilkon, Tolani Lake, Jeddito and Indian Wells; and
2. The WIHCC has successfully provided health care programs, services, functions and activities for the people of the southwest region of the Navajo Nation since September 1, 2002; and
3. The WIHCC Board of Directors has previously reviewed Arizona SB 1092, and has reviewed AHCCCS’s proposed 2017 waiver requests to allow AHCCCS to implement requirements for “able bodied adults” receiving Medicaid services and other waiver requests; and
4. For 2016, CMS approved Arizona’s request to impose copays for non-emergency use of the emergency room for “childless adults” with incomes 100-138% above the Federal Poverty Line (FPL), but rejected Arizona’s other waiver requests made under SB 1092 – work requirements, additional verification requirements, and a lifetime time limit of coverage – on the grounds that those requests undermine access to care and do not support the objective of the Medicaid program; and
5. For 2017, AHCCCS will reapply for the SB 1092 work requirement, monthly income and work requirement verification, monthly redetermination of eligibility, enrollee disenrollment, and a five-year limit on able-bodied adult’s lifetime coverage; and
6. The 2017 AHCCCS waiver requests are unnecessary because Arizona receives a 100% federal pass through (FMAP) for American Indian and Alaska Native Medicaid AHCCCS coverage, and the AHCCCS waiver request will disproportionately adversely affect access to medical care for American Indian and Alaska Native “childless adults” due to the high unemployment rates in northern Arizona counties (2015 statistics showed average unemployment rates on Arizona Indian reservations of 24.4% compared with 5-7% statewide).

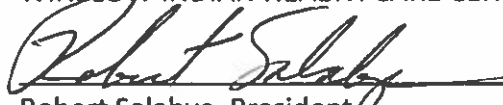
**NOW THEREFORE BE IT RESOLVED:**

1. WIHCC opposes AHCCCS's 2017 SB 1092 waiver requests and requests that CMS deny these requests as it did in 2016 because they will result in reduced access to medical care which does not support the objectives of the Medicaid program, and because they are not necessary with respect to American Indian and Alaskan Native individuals because AHCCCS receives a 100% FMAP for American Indian and Alaska Native AHCCCS participants; and
2. WIHCC encourages AHCCCS and CMS to consult with Indian tribes and tribal organizations concerning SB 1092 waiver requests submitted to CMS and to exempt American Indians and Alaska Native AHCCCS participants from the waiver requests for the reasons stated above.

**CERTIFICATION**

I hereby certify that the foregoing resolution of the WIHCC BOD was duly considered at a duly called meeting of the Board of Directors at the Winslow Indian Health Care Center where a quorum was present and the same was passed with a vote of 8 in favor, 0 opposed, and 0 abstained on this 3<sup>rd</sup> day of February, 2017.

WINSLOW INDIAN HEALTH CARE CENTER, INC.

  
Robert Salaby, President

Motioned by: Mary Ann Begay

Seconded by: Martin Bahe

# SAN CARLOS APACHE TRIBE

San Carlos Avenue  
P.O. Box 0  
San Carlos, Arizona 85550  
Phone (928) 475-1600

Terry Rambler  
Tribal Chairman

Tao Etpison  
Vice-Chairman



February 27, 2017

## Via E-Mail

The Honorable Doug Ducey  
Governor  
State of Arizona  
E-M: [Doug.Ducey@arizona.gov](mailto:Doug.Ducey@arizona.gov)

Thomas Betlach  
Director  
Arizona Health Care Cost Containment System  
801 E. Jefferson Street  
Phoenix, Arizona 85034  
E-M: [Thomas.betlach@azahcccs.gov](mailto:Thomas.betlach@azahcccs.gov)  
[PublicInput@azahcccs.gov](mailto:PublicInput@azahcccs.gov)

Dear Governor Ducey and Mr. Betlach:

On behalf of the San Carlos Apache Tribe (the "Tribe"), I respectfully submit our comments on A.R.S. 36-2903.09, which was enacted by S.B. 1092, and signed into law on March 6, 2015. Under S.B. 1092, Governor Ducey is required to submit a proposed Demonstration Waiver by March 31 annually. Central to our comment is the necessity for an amendment that would provide an additional exemption for those patients served by the Indian Health Service ("IHS"), or a tribal or urban Indian health care program operated pursuant to the federal Indian Self-Determination and Education Assistance Act ("ISDEA", P.L. 93-638, 25 U.S.C. §450) and the Indian Health Care Improvement Act ("IHCA", Section 10221, P.L. 111-148; 25 U.S.C. §1603).

## **Background**

As you may know, the Tribe established the San Carlos Apache Healthcare Corporation ("SCAHC"), a subsidiary, non-profit, which provides direct services funded by self-determination contracts with the IHS pursuant to Public Law 93-638. The SCAHC has been led by its mission of "Apaches Healing Apaches." With its 470 employees, SCAHC provides a busy, 24/7 Emergency

Department and Inpatient Unit that has 46 clinical and administrative departments, which with a satellite health center in Bylas all together offer a full-range of health services, from primary care to diabetes care and prevention, to a variety of specialty care services. Within the last year, SCAHC has had over 92,000 patients, averaging some 7,706 encounters per month, while this year, patient encounters have increased to over 10,000 per month, and primarily from programs and services authorized under the IHCIA. The cap will dramatically hinder SCAHC's ability to provide comprehensive, meaningful healthcare to our members.

### **Demonstration Waiver**

A.R.S. 36-2903.09 requires the State of Arizona to seek a Demonstration Waiver placing a lifetime limit of five years of Medicaid benefits on all able-bodied adults. Capping the Medicaid program will reduce state and federal costs over time. SB1090 did recognize that some segments of the population are most vulnerable, and certain exemptions were provided under subparagraph A.R.S. 36-2903.09(e). However, none of these include American Indian or Alaska Natives who face historically adverse socio-economic forces.

### **SB1092 Ignores History and Economic Realities of Reservations**

Most tribal members in Arizona live on very remote, rural reservations, in dire poverty largely due to the absence of meaningful employment and educational opportunities. For our Tribe, in example, 11,764 (74%) of our members live on the Reservation. Of those residing on the Reservation, 7,863 (67%) are employable (16 to 64 years of age) and of these only 32% are employed by either the Tribe or its economic development subsidiaries.

By contrast, in 2016, upon the reduction of TANF benefits to 12 months, the average monthly number of cases in Arizona was 10,192, which represents 22,171 recipients. (*See* Arizona Department of Economic Security Annual Report, State Fiscal Year 2016, January 3, 2017). Of these, some 2,010 members of the Tribe (17%) receive some sort of federal cash assistance benefits (174 ALTCS, 2,010 TANF, 384 SNAP Food Stamps), while the remainder either may work off-Reservation or have no regular employment.

In the face of these economic statistics and the absence of meaningful employment opportunities, capping Medicaid eligibility cannot be considered "innovative" by CMS; instead, the cap will effectively block members of the Tribe from receiving healthcare. Moreover, SCAHC depends upon Medicaid as well as Medicare and the Children's Health Insurance Program, and the cap will effectively reduce this resource. Finally, if instituted, the cap would in effect breach the United States trust obligation to provide healthcare in perpetuity to all American Indians and Alaska Natives, an obligation that stems from all that the tribes have sacrificed for the creation of this great country.

### **Ignores Pass Through Structure**

Medicaid dollars for American Indians are a pass through for tribal members. Under section 1905(b) of the Social Security Act, the federal government is required to match Arizona's expenditures at the Federal Medical Assistance Percentage (FMAP) rate, which is 100 percent for state expenditures on behalf of AI/AN Medicaid beneficiaries for covered services received through an Indian Health Service facility whether operated by the Indian Health Service or by a Tribe or Tribal organization (as defined in section 4 of the Indian Health Care Improvement Act). If services are not received through an IHS/Tribal facility, the federal government will match the state's payment for the services at the state's regular FMAP rate, which in FY 2016 ranges from 50.00 percent to 74.17 percent.

### **No Cost-Sharing Assurance**

The current Demonstration Waiver requires that the Arizona Health Care Cost Containment System ("AHCCCS") develop and impose cost-sharing requirements on Medicaid beneficiaries. SB 1092 required that they apply as follows:

- (a) The nonemergency use of emergency departments; and
- (b) The use of ambulance services for nonemergency transportation or when it is not medically necessary.

The Tribe seeks assurance that cost-sharing exemptions pursuant to federal laws apply to American Indians and Alaska Natives in the AHCCCS system. These are pursuant to the American Recovery and Reinvestment Act (Public Law 111-5, Section 5006), and the IHCA, as amended by Public law 111-148, Sections 10221(a), 1402, 1415, and 3309.

SB 1092 further requires that in any year, the director shall apply only the waivers or amendments to the current section 1115 waiver that have not been approved and are not in effect. It is in this regard that the Tribe submits our proposed amendments below with regard to these sections of the law that CMS previously did not approve. We continue to seek that the current administration considers the concerns of the Tribe and reject the provisions of the proposed Demonstration that will have detrimental effects on our health care system and the members of our Tribe.

### **Proposed Amendments**

Accordingly, for the work requirement for all able-bodied adults, the Tribe proposes an amendment to A.R.S. 36-2903.09(A)(1)(e) in the form of a new subsection "v", as follows:



(v) IS SERVED BY THE INDIAN HEALTH SERVICE, A TRIBAL OR URBAN INDIAN HEALTH CARE PROGRAM PURSUANT TO THE FEDERAL INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT (“ISDEA”, P.L. 93-638, 25 U.S.C. §450) AND THE INDIAN HEALTH CARE IMPROVEMENT ACT (section 10221, P.L. 111-148; 25 U.S.C. §1603).

Similarly, as to the lifetime limit of five years of benefits, under section (A)(2), we propose to include two new subsections (h) and (i), as follows:

(h) IS UNDER TWENTY-SIX YEARS OF AGE AND WHO WAS IN TRIBAL FOSTER CARE WHEN THE PERSON BECAME EIGHTEEN YEARS OF AGE PURSUANT TO SECTION 2004 of 42 U.S.C. 180001.

(i) IS SERVED BY THE INDIAN HEALTH SERVICE, A TRIBAL OR URBAN INDIAN HEALTH CARE PROGRAM PURSUANT TO THE FEDERAL INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT (P.L. 93-638; 25 U.S.C. 450) AND THE INDIAN HEALTH CARE IMPROVEMENT ACT (SECTION 10221, P.L. 111-148; 25 U.S.C. 1603).

Finally, under section (A)(3), we propose an exemption from the additional cost-sharing requirements in the form of a new subsection (c), as follows:

(c) AMERICAN INDIANS ENROLLED IN MEDICAID IN ARIZONA ARE EXEMPTED FROM COST SHARING REQUIREMENTS PURSUANT TO APPLICABLE FEDERAL LAWS (THE AMERICAN RECOVERY AND REINVESTMENT ACT (SECTION 5006, P.L. 111-5, THE INDIAN HEALTH CARE IMPROVEMENT ACT (SECTION 10221, P.L. 111-148, 25 U.S.C. 1603 AND OTHER PROVISIONS OF P.L. 111-148 (SECTION 1402 (d)(1)(2), SECTION 1415, SECTION 3309).

## **Conclusion**

Taken together, these three amendments will recognize the historical, socio-economic barriers that our people continue to face, while preserving the trust obligation of the United States to provide healthcare to all American Indians and Alaska Natives in Arizona, including the members of the San Carlos Apache Tribe.

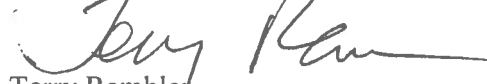
Thank you in advance for your consideration of our proposed amendment.

**Governor Ducey and Tom Betlach**  
Re: Demonstration Waiver Exemption  
February 27, 2017  
Page 5 of 5

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Sincerely,

SAN CARLOS APACHE TRIBE



Terry Rambler  
Chairman

Cc: AZ Rep. Heather Carter, Chair, Health Committee, [Hcarter@azleg.gov](mailto:Hcarter@azleg.gov)  
AZ Sen. Frank Pratt, [Fpratt@azleg.gov](mailto:Fpratt@azleg.gov)  
AZ Rep. David L. Cook, [Dcook@azleg.gov](mailto:Dcook@azleg.gov)  
AZ Rep. Thomas R. Shope, [Tshope@azleg.gov](mailto:Tshope@azleg.gov)  
AZ Sen. Jamescita Peshlakai, [jpeshlakai@azleg.gov](mailto:jpeshlakai@azleg.gov)  
AZ Rep. Wenona Benally, [wbenally@azleg.gov](mailto:wbenally@azleg.gov)  
AZ Rep. Eric Descheenie, [edescheenie@azleg.gov](mailto:edescheenie@azleg.gov)

Christina Corieri, Senior Policy Advisor to Governor Ducey  
Kim Russell, Exec. Dir., Arizona Advisory Council on Indian Health Care  
Maria Dadgar, Exec. Dir., Inter Tribal Council of Arizona

San Carlos Apache Tribe  
Tao Etpison, Vice Chairman  
Members of the San Carlos Council  
Victoria Began, Interim CEO, SCAHC  
David Reede, Executive Director, Department of Health and Human Services  
File



**THE  
NAVAJO  
NATION**

**TEESTO CHAPTER**

P.O. BOX 7385 – Teesto CPU  
Winslow, Arizona 86047  
Phone: (928) 657-8042 – Fax: (928) 657-8046



“Saddle Butte Mountain”

**RESOLUTION OF THE TEESTO CHAPTER  
Fort Defiance Agency, The Navajo Nation  
RESOLUTION No.: TEE-FEB-20-17**

**A RESOLUTION OPPOSING ARIZONA HEALTH CARE COST CONTAINMENT  
SYSTEM (AHCCCS) WAIVERS SUBMITTED TO THE CENTERS OF MEDICAID  
AND MEDICARE SERVICES (CMS) PURSUANT TO SENATE BILL (SB) 1092 THAT  
NEGATIVELY IMPACT ACCESS TO HEALTH CARE SERVICES FOR THE  
AMERICAN INDIAN POPULATION IN ARIZONA.**

**WHEREAS:**

1. Teesto Chapter is a Certified Chapter of the Navajo Nation in accordance to Title 26, Section 103 and Section 102, and further recognized as a local government entity with the responsibility and authority to implement community projects that will benefit the Teesto community; and
2. The Teesto Chapter pursuant to Navajo Nation Code: Title 26, The Navajo Nation Local Governance Act, is a Local Governance Certified Chapter of the Navajo Nation through Resolution No.: TEE-JY-32-10 ; and
3. The Teesto Chapter as a duly Government Certified Chapter is empowered and authorized to oversee various community business and development within its Chapter boundaries; and
4. The Winslow Indian Health Care Center (“WIHCC”) is a non-profit corporation chartered under Navajo nation law and sanctioned and authorized by the Navajo Nation Council as a “Tribal Organization” in Resolution CJY-33-10 to operate the federally funded health care programs, services, functions and activities in and near the eight Chapters of Leupp, Birdsprings, Teesto, White Cone, Dilkon, Tolani Lake, Jeddito and Indian Wells; and
5. The WIHCC has successfully provided health care programs, services, functions and activities for the people of the southwest region of the Navajo Nation since September 1, 2002; and
6. The WIHCC Board of Directors has previously reviewed Arizona SB 1092, and has reviewed AHCCCS’s proposed 2017 waiver requests to allow AHCCCS to implement requirements for “able bodied adults” receiving Medicaid services and other waiver request; and
7. For 2016, CMS approved Arizona’s request to impose copays for non-emergency use of the emergency room for “childless adults” with income 100-138% above the Federal Poverty Line (FPL), but rejected Arizona’s other waiver requests made under SB 1092 – work requirements, additional verification requirements, and a lifetime time limit of coverage – on the grounds that those requests undermine access to care and do not support the objective of the Medicaid programs; and
8. For 2017, AHCCCS will reapply for the SN1092 work requirement, monthly income and work requirement verification, monthly redetermination of eligibility, enrollee disenrollment, and a five-year limit on able-bodied adult’s lifetime coverage; and
9. The 2017 AHCCCS waiver requests are unnecessary because Arizona receives a 100% federal pass through (FMAP) for American Indian and Alaska Native Medicaid AHCCCS coverage, and the AHCCCS waiver request will disproportionately adversely affect access to meical care for American Indian and Alaska Native “childless adults” due to the high unemployment rates in northern Arizona counties (2015 statistics showed average unemployment rates on Arizona Indian reservations of 24.4% compared with 5-7% statewide).

*Elmer Clark, President - LeRoy Thomas, Vice President - Sophia Francis, Secretary/Treasurer - Morgan Yazzie,  
Grazing Official- Lee Jack, Sr., Council Delegate(Teesto/Dilkon/Indian Wells/Greasewood/Whitecone)*



**THE  
NAVAJO  
NATION**

**TEESTO CHAPTER**

P.O. BOX 7385 – Teesto CPU  
Winslow, Arizona 86047  
Phone: (928) 657-8042 – Fax: (928) 657-8046



“Saddle Butte Mountain”

**RESOLUTION No.: TEE-FEB-20-17**

**NOW THEREFORE BE IT RESOLVED:**


1. The Teesto Chapter opposes AHCCCS’s 2017 SB 1092 waiver requests and requests that CMS deny these requests as it did in 2016 because they will result in reduced access to medical care which does not support the objectives of the Medicaid program, and because they are not necessary with respect to American Indian and Alaskan Native individuals because AHCCCS receives a 100% FMAP for American Indian and Alaska Native AHCCCS participants; and
2. The Teesto encourages AHCCCS and CMS to consult with Indian tribes and tribal organizations concerning SB 1092 waiver requests submitted to CMS and to exempt American Indians and Alaska Native AHCCCS participants from the waiver requests for the reasons stated above.

**CERTIFICATION**

We, hereby certify that the foregoing resolution was considered in a duly called Chapter meeting at Teesto, Navajo County, Arizona, at which a quorum was present and the same was passed with a vote of 10 in favor; 0 opposed and 2 abstained on this 20<sup>th</sup> day of February 2017.

Motion: Terrance Yazzie

Second: Laura Williams

  
\_\_\_\_\_  
Elmer Clark, Chapter President



## TUBA CITY REGIONAL HEALTH CARE CORPORATION

167 North Main Street, P.O. Box 600  
Tuba City, Arizona 86045-0600  
(928) 283.2501

February 23, 2017

Dear Leaders,

I write to you today, on behalf of Tuba City Regional Health Care Corporation patient population, in support of Navajo Nation Legislation No. 0197-15 An Action Relating To Health, Education and Human Services: and Naa'bik'iyati: Requesting and Recommending a Waiver to Arizona SB 1092 AHCCCS Waiver For Navajo Nation Citizens and the Need for Tribal Consultations by the Arizona Governor's Office in the Future.

Arizona SB 1092 is detrimental to our Navajo, Hopi, and San Juan Southern Paiute tribes in our service area.

As you are well aware Native American healthcare is largely underfunded by the Federal Government. The Federal government is fully aware of this and that is why we are allowed to bill for reimbursements through Medicare and Medicaid (AHCCCS) programs.

The State of Arizona is proposing with this Bill essentially to cut Native American healthcare funding at conservative amounts by 30-40%. This Bill does not support Federal Trust Responsibilities, and for that reason alone it should **EXEMPT** Native American communities.

Attached is a resolution passed by the Board of Directors, Tuba City Regional Health Care Corporation, on April 16, 2015.

- TCRHCC opposes SB 1092 and CMS's consideration of any waiver request submitted thereunder;
- TCRHCC encourages the State of Arizona and all of its departments and entities to provide Tribal Consultation with Native American tribes and tribal organizations concerning SB 1092, any waiver requests developed or submitted to CMS relative to SB 1092 or in any way relative to Native American health care, and to allow meaningful participation by Native American tribes and tribal organizations in developing a responsible health care plan for all Arizonians.

SB 1092 will greatly impact TCRHCC and its ability to provide quality health care services to the Navajo, Hopi and San Juan Southern Paiute in Northern Arizona. Everyday SB 1092 is in affect is another day that the health care goals for Native Americans remain elusive and unattainable.

Sincerely,

A handwritten signature in black ink that reads "Lynette Bonar". The signature is written in a cursive, flowing style.

Lynette Bonar, RN, MBA, BSN  
Chief Executive Officer



## **TUBA CITY REGIONAL HEALTH CARE CORPORATION**

167 North Main Street, P.O. Box 600  
Tuba City, Arizona 86045-600  
(928) 283-2784

### **RESOLUTION OF THE TUBA CITY REGIONAL HEALTH CARE CORPORATION**

#### **OPPOSING ARIZONA SENATE BILL 1092 WHICH GREATLY, DISPROPORTIONATELY, AND NEGATIVELY AFFECTS NATIVE AMERICANS, NATIVE AMERICANS' ABILITY TO OBTAIN HEALTH CARE AND THE HEALTH CARE ENTITIES SERVING NATIVE AMERICANS**

#### **WHEREAS:**

1. Tuba City Regional Health Care Corporation (TCRHCC), is a 501(c)3, Navajo Nation, Non-Profit corporation; *and*
2. Pursuant to Navajo Nation Council Resolutions, CJN-35-05 and CJY-33-10, TCRHCC is authorized and designated as a "Tribal Organization" for the purpose of managing and operating contracts with the Indian Health Service Under Public Law 93-638; *and*
3. TCRHCC, as a Tribal Organization, operates the former Tuba City Indian Medical Center pursuant to the Indian Self-Determination Act, Public Law 93-638; *and*
4. The TCRHCC Board of Directors (BOD), the governing body of TCRHCC, is strongly committed to the Mission of providing accessible, quality, compassionate health care, and promoting healthy lifestyles; *and*
5. On Friday, March 6, 2015, Arizona Governor Doug Ducey signed legislation (SB 1092) (hereinafter "SB 1092") requiring the State of Arizona to request federal permission every year, forever, to among other things, impose work requirements on Medicaid recipients and remove them from the health care program after five years; *and*
6. In vetoing similar legislation last year, former Governor Jan Brewer, stated that removing a half million people from the Medicaid program would not only harm them, but bring the state's health-care system "to a breaking point;" that statement remains true today and applies to SB 1092; *and*
7. SB 1092 has a particularly harmful impact on the unemployed and lower income producing population in the State of Arizona; *and*
8. Unemployment on the Navajo Nation, by conservative estimate, is in excess of 40% of the Navajo population (compared to 5% - 7% state-wide) and an even larger percentage of the population is below the poverty level; *and*
9. Due to the foregoing, the impact of the Legislation is far greater on Navajo's and the medical providers on the Navajo Nation serving that population; *and*
10. This burden imposed by SB 1092 will greatly impact TCRHCC and its ability to provide health care services to the Navajo, Hopi and Southern Paiute Native Americans which it serves; *and*

11. Medicaid comprises more than half of TCRHCC's revenue. It is estimated that SB 1092 will result in a substantial and detrimental revenue loss to TCRHCC which will drastically diminish the level and quality of health care TCRHCC can provide to its population; *and*
12. The Arizona Medicaid program (AHCCCS) is funded by a straight pass through of federal funds without cost, matching funding or other assessments against the State of Arizona. The State of Arizona actually receives an administrative fee for said transactions. The federal pass through funding for health care for Native Americans is part of the Federal Government's fulfillment of its trust responsibility to all Native Americans established by treaty and subsequent legislation. SB 1092 blocks the Federal Government from fulfilling this trust obligation; *and*
13. The Federal Government has a unique trust obligation to provide for the health care of American Indians and Medicaid is a necessary component of its delivery of health care in meeting this unique trust obligation. The Federal Government pays 100% reimbursement for said Native American beneficiaries and the state budget is irrelevant to that. SB 1092 reveals a complete lack of substantive and procedural understanding of federal health care financing for Native American beneficiaries and this imprudent action will actually create greater expense to the State of Arizona and the hospitals that will now be required to care for these people; *and*
14. The Navajo Nation has previously passed legislation, Legislation No.: 0102-15, which TCRHCC supports and adopts and incorporates herein as Exhibit A.

**NOW THEREFORE BE IT RESOLVED THAT:**

1. TCRHCC opposes SB 1092 and CMS's consideration of any waiver request submitted thereunder.
2. TCRHCC requests and encourages the Arizona Legislature to revoke and rescind SB 1092.
3. TCRHCC encourages the State of Arizona and all of its departments and entities to consult with Native American tribes and tribal organizations concerning SB 1092, any waiver requests developed or submitted to CMS relative to SB 1092 or in any way relative to Native American health care, and to allow meaningful participation by Native American tribes and tribal organizations in developing a responsible health care plan for all Arizonians.

**CERTIFICATION**

We, hereby, certify that the foregoing resolution was duly considered at duly called meeting of the Tuba City Regional Health Care Corporation Board of Director's at Tuba City (Arizona) at which a quorum was present and that the same was passed by a vote of 8 in favor, 0 opposed, and 0 abstained, this 16th day of April, 2015.

Motion by: Dr. Alan Numkena

Second by: Tincer Nez, Sr.

  
\_\_\_\_\_  
Christopher Curley, President  
TCRHCC Board of Directors

# EXHIBIT A

## COMMITTEE REPORT

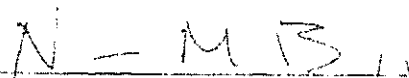
THE HEALTH, EDUCATION AND HUMAN SERVICES COMMITTEE OF THE NAVAJO NATION COUNCIL to whom has been assigned;

LEGISLATION NO. 0102-15

AN ACTION RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES AND NAABIK'IYATI; OPPOSING SB 1092 IN THE ARIZONA STATE LEGISLATURE THAT WILL ADVERSELY IMPACT HEALTH CARE SERVICE TO INDIAN PEOPLE

Has had under consideration and report the same with the recommendation that it **PASS** with no amendment and no directive;

And therefore referred the same to the NAABIK'IYATI COMMITTEE OF THE NAVAJO NATION COUNCIL

  
\_\_\_\_\_  
Honorable Norman M. Begay, Vice-Chairperson  
Health, Education and Human Services Committee

Dated: April 1, 2015

### Main Motion

Motion: by: Honorable Nelson BeGaye

Seconded by: Honorable Tuchoney Slim, Jr.

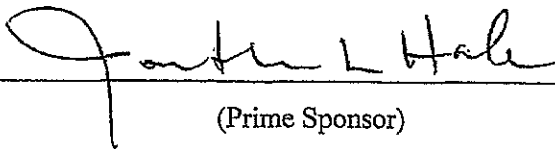
Vote: 3 in favor: 0 Opposed and 0 Abstain



5-DAY BILL HOLD PERIOD: None  
Website Posting Time/Date: 11:46 am 3/24/15  
Posting End Date: 3/30/2015  
Eligible for Action: 2/21/2015

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PROPOSED STANDING COMMITTEE RESOLUTION  
23<sup>rd</sup> NAVAJO NATION COUNCIL -- First Year, 2015  
INTRODUCED BY

  
(Prime Sponsor)

TRACKING NO. 0102-15

AN ACTION  
RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES AND  
NAABIK'ÍYÁTI'; OPPOSING SB 1092 IN THE ARIZONA STATE LEGISLATURE  
THAT WILL ADVERSELY IMPACT HEALTH CARE SERVICE TO INDIAN  
PEOPLE

BE IT ENACTED:  
**WHEREAS:**

- A. The Navajo Nation established the Health, Education and Human Services Committee (HEHSC) as a Navajo Nation Council standing committee and as such empowered HEHSC to review and recommend resolutions regarding certain matters, including health, education and social services. 2 N.N.C. §§ 164 (A)(9), 400 (A), 401 (B)(6)(a) (2012); *see also* CO-45-12.
- B. The Navajo Nation established the Naabik'íyáti' Committee as a Navajo Nation Council standing committee and as such empowered Naabik'íyáti' Committee to coordinate all state programs, including those of the state of Arizona. 2 N.N.C. §§ 164 (A)(9), 700 (A), 701 (A)(4) (2012); *see also* CO-45-12.
- C. The Navajo Nation has a government-to-government relationship with the state of Arizona.
- D. Federal Medicaid and Children's Health Insurance Program (CHIP) provide health coverage to nearly 60 million Americans, including children, pregnant women, parents,

1 seniors and individuals with disabilities. *Medicaid.gov*. In order to participate in  
2 Medicaid, federal law requires states to cover certain population groups (mandatory  
3 eligibility groups) and gives them (the states) the flexibility to cover other population  
4 groups (optional eligibility groups). *Id.* States set individual eligibility criteria within  
5 federal minimum standards. States can apply to Centers for Medicare and Medicaid  
6 Service (CMS) for a waiver of federal law to expand health coverage beyond these  
7 groups. *Id.*

8 E. Arizona ranks high among states with Indians living below the poverty level. See,  
9 *2013 American Indian Population and Labor Force Report, U.S. Department of the*  
10 *Interior, Office of the Secretary Office of the Assistant Secretary*. Indians are among the  
11 poorest citizens in the state of Arizona. As such, adequate health care to Indian people is  
12 a major concern.

13 F. The Arizona Health Care Cost Containment System (AHCCCS) is the Medicaid  
14 program in the state of the Arizona. AHCCCS serves the low-income; the four programs  
15 under AHCCCS are Medicaid, KidsCare, Arizona Long Term System, and Medicare  
16 Cost Sharing. Due to lack of funding appropriated by the Arizona Legislature the Kids  
17 Care Program froze enrollment into the program in January 1, 2010. Then in February  
18 2014 the Kids Care Program ended.

19 G. Section 1115 of the Social Security Act gives the Secretary of the Health and  
20 Human Services authority to waive certain requirements of federal Medicaid state and  
21 regulation. Under the authority, the Secretary can permit a state to receive federal  
22 matching funds to operate its Medicaid program in ways not otherwise allowed under the  
23 federal rules so long as the state's proposal promotes the key objectives of the Medicaid  
24 program. States are given flexibility in managing, designing and improving their  
25 programs. Waivers allow states to test new or existing ways to deliver and pay for health  
26 care services in Medicaid and the Children's Health Insurance Program (CHIP). Through  
27 waivers, eligibility for health care services can be expanded to vulnerable individuals  
28 who are not otherwise eligible (for Medicaid or CHIP); services not typically covered by  
29  
30

1 Medicaid can be provided; and innovative service delivery systems can be used that  
2 improve care, increase efficiency and reduce costs.

3 H. Bill SB 1092 requires the Arizona Health Care Cost Containment System  
4 (AHCCCS) Director to apply to the Centers for Medicare and Medicaid Services (CMS)  
5 for a Waiver or amendments to the current Section 1115 Wavier. See attached Exhibit  
6 "A," a summary of the bill. The amendment will institute a work verification  
7 requirement for all able-bodied adults (19+) receiving AHCCCS covered services. It  
8 stipulates that an individual is required to become employed, actively seek employment  
9 or attend school or job training at least 20 hours per week. AHCCCS is allowed to ban  
10 the eligible person for 1 year if the person fails to report family income or makes false  
11 statements about the work requirement. It places a lifetime limit of 5 years for Medicaid  
12 eligibility for able bodied adults. Some exceptions to the lifetime cap were included in an  
13 amendment.

14 I. SB 1092 impacts the most vulnerable and economically challenged people in our  
15 state up to 133% of the Federal Poverty Level (*i.e.*, 1 person with an annual income up to  
16 \$15,654 or 4 persons with an annual income up to \$32,253) and therefore affects a  
17 significant portion of the Navajo Nation population in Arizona. See attached Exhibit  
18 "B," *Advisory Council on Indian Health Care*, March 5, 2015.

19  
20 **NOW THEREFOR BE IT RESOLVED THAT:**

21 The Navajo Nation hereby opposes SB 1092, unnecessary legislation that will  
22 significantly impact health services to Indian people in Arizona.  
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# HOUSE OF REPRESENTATIVES

SB 1092/HB 2075

AHCCCS; annual waiver submittals.

Sponsors: Senator Barto



DPA Committee on Children and Family Affairs

DPA Caucus and COW

X As Transmitted to the Governor

## OVERVIEW

HB 2075 requires the Director (Director) of the Arizona Health Care Cost Containment System (AHCCCS) to apply the Centers for Medicare and Medicaid Services (CMS) by March 30 of each year for waivers or amendments to the current Section 1115 Waiver.

## HISTORY

Laws 1981, Chapter 1, established AHCCCS. AHCCCS is Arizona's Medicaid program that oversees contracted health plans for the delivery of health care to individuals and families who qualify for Medicaid and other medical assistance programs. Through contracted health plans across the state, AHCCCS delivers health care to qualifying individuals including low-income adults, their children or people with certain disabilities.

AHCCCS provides medical assistance programs for acute care, long term care and contracts with the Arizona Department of Health Services Division of Behavioral Health Services to bring behavioral health services to its acute care members. The Arizona Long Term Care System program is for individuals over the age of 65, are blind, disabled or need continuing assistance at a nursing facility level of care. As of February 2015 there are approximately 1.6 million individuals enrolled in the AHCCCS program.

Section 1115 of the Social Security Act gives the Secretary of Health and Human Services authority to approve experimental, pilot or demonstration projects that promote the objectives of the Medicaid and Children's Health Insurance programs. The purpose of these demonstrations, give states additional flexibility to design and improve their programs [Hyperlink](#).

## PROVISIONS

- 1) Requires on or before March 30 of each year, the Director of AHCCCS to apply to CMS for waivers or amendments to the current Section 1115 Waiver to allow the State to:
  - a) Institute a work requirement for all able-bodied adults receiving Medicaid services. The work requirement must:
    - i) Require an eligible person to either become employed, actively seek employment to be verified by AHCCCS or attend school or a job training program, or both, at least 20 hours per week.
    - ii) Require an eligible person to verify on a monthly basis compliance with requirements directly noted above and any change in family income.
    - iii) Require AHCCCS to confirm an eligible person's change in family income and re-determine the person's eligibility.
    - iv) Allow AHCCCS to ban an eligible person from enrollment for one year if the eligible person knowingly failed to report a change in family income or made a false

SB 1092

- statement regarding compliance related to becoming employed, actively seeking employment or attending a job training program.
- v) Allow for an exemption if a person meets any of the following conditions:
    - (1) Is at least 19 years of age but is still attending high school as a full-time student.
    - (2) Is the sole caregiver of a family member who is under six years of age.
    - (3) Is currently receiving temporary or permanent long-term disability benefits from a private insurer or from the government.
    - (4) Has been determined to be physically or mentally unfit for employment by a health care professional in accordance with rules adopted by AHCCCS.
  - b) Restrict benefits for able-bodied adults to a lifetime limit of five years that begins on the effective date of the waiver or amendment to the current Section 1115 Waiver and does not include any previous time a person received benefits. The lifetime limit does not include any time during which the person meets any of the following conditions:
    - i) Is pregnant.
    - ii) Is the sole caregiver of a family member who is under six years of age.
    - iii) Is currently receiving temporary or permanent long-term disability benefits from a private insurer or from the government.
    - iv) Is at least 19 years of age but is still attending high school as a full-time student.
    - v) Is employed full time but continues to meet the income eligibility requirements under this article.
    - vi) Is enrolled before reaching 19 years of age.
    - vii) Is defined as an eligible person.
  - c) Develop and impose meaningful cost-sharing requirements to deter both:
    - i) The nonemergency use of emergency departments; and
    - ii) The use of ambulance services for nonemergency transportation or when it is not medically necessary.
  - 2) Mandates that the Director apply for only the waivers or amendments to the current Section 1115 Waiver that have not been approved and are not in effect.
  - 3) Requires the Director on or before April 1 of each year to submit a letter confirming the submission of the waiver requests to the governor and the legislature.
  - 4) Contains a rule making exemption for one year after the effective date of this act for purposes of implementing the act.
  - 5) Defines *able-bodied* and *adult*.

**Douglas Ducey**  
Governor



**Kim Russell**  
Executive Director

**ADVISORY COUNCIL ON INDIAN HEALTH CARE**

March 5, 2015

The Honorable Doug Ducey  
Arizona State Capitol  
Capitol Complex  
1700 West Washington  
Phoenix, AZ 85007-2890

**RE: SB 1092**

Dear Governor,

The Advisory Council on Indian Health Care's (ACOIHC) mission is to advocate for increasing access to high quality health care programs for all American Indians in Arizona. Per ARS 36-2902.01 and ARS 36-2902.02 the duty of the ACOIHC is to develop a comprehensive health care delivery and financing system for American Indians, specific to each Arizona Indian tribe, with a focus on creating Indian health care demonstration projects pursuant to title XIX of the Social Security Act.

The ACOIHC is concerned about SB 1092. This legislation would require the Director of the Arizona Health Care Cost Containment System (AHCCCS) to apply to the Centers for Medicare and Medicaid Services (CMS) by March 30 of each year for waivers or amendments to the current Section 1115 Waiver. This legislation if signed will have significant detrimental impacts on tribal members that are served through the Indian Health Service and Tribally-operated health care programs.

The purpose of the Section 1115 Waiver and the resulting demonstration projects, are to give States additional flexibility to manage, design and improve their programs, so they may demonstrate and evaluate policy approaches such as:

- Expanding eligibility to vulnerable individuals who are not otherwise Medicaid or CHIP eligible
- Providing services not typically covered by Medicaid and
- Using innovative service delivery systems that improve care, increase efficiency, and reduce costs.

By placing a lifetime limit of 5 years for Medicaid eligibility it achieves none of these important results for our poorest citizens of Arizona. Rather it will impact the most vulnerable and economically challenged people in our state up to 133% of the Federal Poverty Level (i.e., 1 person with an annual income up to \$15,654 or 4 persons with an annual income up to \$32,253) and therefore affect one third of the American Indian population in Arizona.

PO Box 25520, Mail Drop 7700  
Phoenix, AZ 85002

2830 W. Glendale Avenue, Suite #1  
Phoenix, AZ 85051

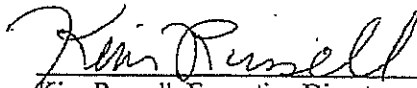
Phone (602) 374-2575 Fax: (602) 626-7217

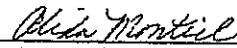
In addition, SB 1092 would allow Arizona to institute a work verification requirement for all able-bodied adults (19+) receiving AHCCCS covered services which requires the individual to become employed, actively seek employment or attend job training. Arizona's unemployment rate although slowly recovering is still above the national average (5.6% vs 6.7%) and for Tribal reservations in Arizona the average unemployment rate is 5 times the State average at 24.4%. Tribal reservations experience severe rates of unemployment due to a lack of economic infrastructure and job opportunities. Tribal members in Arizona are at a severe disadvantage when it comes to the negative repercussions of SB 1092.

Again, we urge your careful consideration of SB 1092. We look forward to working with you to assure that American Indians within the state of Arizona are not negatively impacted by this measure or other policy changes of concern to the Tribes in Arizona.

Please contact me at 602-374-2575 or [Kim.Russell@azahcccs.gov](mailto:Kim.Russell@azahcccs.gov) or Ms. Alida Montiel, Chairperson of the ACOIHC at (602) 258-4822 or [Alida.Montiel@itcaonline.com](mailto:Alida.Montiel@itcaonline.com) if you have any questions or seek clarification.

Sincerely,

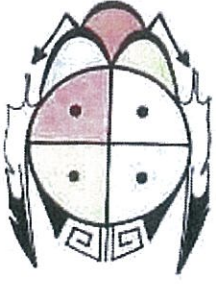
  
\_\_\_\_\_  
Kim Russell, Executive Director  
Advisory Council on Indian Health Care

  
\_\_\_\_\_  
Alida Montiel, Chairperson  
Advisory Council on Indian Health Care

PO Box 25520, Mail Drop 7700  
Phoenix, AZ 85002

2830 W. Glendale Avenue, Suite #1  
Phoenix, AZ 85051

Phone (602) 374-2575 Fax: (602) 626-7217



# UPPER VILLAGE OF MOENKOPI

April 22, 2015

## RE: THE OPPOSITION OF ARIZONA SENATE BILL 1092

To Whom It May Concern:

This letter is written in opposition to Arizona Senate Bill 1092 (SB 1092). On Friday, March 6, 2015, Arizona Governor Doug Ducey signed legislation SB 1092 requiring the State of Arizona to request federal permission to impose work requirements on Medicaid recipients and remove them from the health care program after five years as well as require a co-pay for non-emergent Emergency Room visits.

SB 1092 has a harmful impact on the unemployed and lower income population in the State of Arizona. The burden imposed by SB1092 will greatly impact our community hospital, Tuba City Regional Health Care Corporation (TCRHCC) and its ability to provide health care services to the Navajo, Hopi and San Juan Southern Paiute Native Americans which it serves. It is estimated that SB 1092 will result in a substantial revenue loss to TCRHCC which will diminish the level and quality of health care TCRHCC can provide to its population.

Further, SB 1092 blocks the Federal Government from fulfilling its trust obligation. The Federal Government has a unique trust obligation to provide for the health care of American Indians and Medicaid is a necessary component of its delivery of health care in meeting this unique trust obligation. SB 1092 reveals a lack of substantive and procedural understanding of federal health care financing for Native American beneficiaries. This imprudent action will create greater expense to the State of Arizona and the hospitals that care for these people, not only on the Navajo and Hopi Nations but off tribal land.

The Upper Village of Moenkopi opposes SB 1092 and CMS's consideration of any waiver request submitted thereunder and requests the Arizona Legislature to revoke and/or amend SB 1092 to exempt Native Americans.

The Upper Village of Moenkopi and TCRHCC encourage the State of Arizona and all of its departments and entities to consult with Native American tribes and tribal organizations concerning SB 1092 relative to any waiver requests developed or submitted to CMS. Meaningful participation by Native American tribes will only result in a responsible health care plan for all tribal communities.

Respectfully,

Hubert Lewis, Governor  
Upper Village of Moenkopi

Hubert Lewis Sr.  
**Governor**

Alberta Sakiestewa  
**Council Secretary**

**Council  
Representatives**  
Danny Humetewa, Sr.  
Leroy Sumatzkuku  
Michael Elmer  
Jonathan H. Phillips

**Council  
Members**  
Vacant  
Yvonne Hoosava  
Robert Charley  
Vacant