

**Arizona 1115 Waiver Amendment Request  
Continuing Uncompensated Care Payments for Indian Health  
Services and Tribally Operated 638 facilities  
under the Demonstration**

**I. Summary**

The Arizona Health Care Cost Containment System (AHCCCS) is requesting an amendment that would allow the State to continue its current authority to provide uncompensated care payments to Indian Health Services (IHS) and Tribally-operated 638 facilities for services provided to Medicaid-eligible adults that were eliminated or limited on October 1, 2010. The request also seeks to provide additional protection to IHS and 638 facilities by continuing the State's authority to make uncompensated care payments for services provided to adults without dependent children with incomes between 0% and 100% of the Federal Poverty Level ("childless adults") only if any legal or other challenge is successful in halting or delaying implementation of the State's restoration of coverage to that population. The State seeks this amendment through the remaining period of its 1115 Research and Demonstration Waiver (the "Demonstration"). The State's authority to make these supplemental payments to IHS and 638 facilities under the Demonstration expires December 31, 2013 as stated in the Costs Not Otherwise Matchable ("CNOMs") section 22.

This amendment request is intended to allow the State to:

1. **Continue Benefits Payments under Option 2 only.**

This request allows the State, under Option 2 only, to continue making payments for critical services provided by IHS and 638 facilities to adult Medicaid beneficiaries that are no longer covered by the State. These benefits include:

- Emergency Dental
- Services provided by a Podiatrist
- Insulin Pumps
- Percussive Vests
- Bone-Anchored Hearing Aids
- Cochlear Implants
- Orthotics
- Microprocessor-controlled: lower limbs and joints for the lower limbs
- Outpatient Physical Therapy Visits in excess of 15 visits per year
- Inpatient 25 day limit (which expires October 1, 2014)

2. **Continue Childless Adult Coverage Payments as a Contingency if Legal or other Challenges Halt or Delay Implementation of Childless Adult Restoration or Expansion.**

The State is currently in litigation filed by the Goldwater Institute on behalf of 36 Arizona legislators regarding a key component of its efforts to restore coverage to its existing childless adult population. This amendment request would allow AHCCCS to continue the waiver payments to IHS and 638 facilities for care

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provided to childless adults not eligible because of the freeze if the lawsuit filed by the Goldwater Institute, or any other challenge, successfully halts or delays implementation of restoration and expansion.

## **II. Overview**

### *Background: How the Tribal Waiver Request Came Into Being*

The Great Recession had a severe impact on state budgets across the country. Arizona was among the states most severely impacted. The State lost 300,000 jobs, which resulted in unemployment reaching near 10%. As a consequence, Medicaid enrollment increased by approximately 30%. With State revenues down 34%, there were fewer dollars available to cover the State's share of AHCCCS program costs. These revenue losses also meant fewer dollars available to cover the costs of K-12 education and universities, child protective services, corrections and other basic state public health and safety programs impacting all Arizonans. Meanwhile, the AHCCCS program went from being 18% of the State's budget in 2007 to nearly 30% of the General Fund in 2011.

To address the budget crisis, the State began a process of implementing reductions across all state government. The AHCCCS program alone has been reduced by nearly \$2.5 billion in total funds (state and federal) since the start of the Recession. The State also raised taxes by \$1 billion. This tax increase prevented additional reductions to education and to the Medicaid program.

Reductions to the AHCCCS program have included decreases in provider and health plan rates, elimination or limitation of benefits, administrative reductions, increased member cost sharing, enrollment freezes for KidsCare and childless adults, and the phase out of the spend down program. Benefit reductions were applied to all adults on the AHCCCS program. Those reductions that had the most significant impact on the American Indian Health Program were the elimination of podiatrists as a provider type as well as elimination of emergency dental.

After consultation with tribal stakeholders, the State concluded it was in the best interest of the American Indian Health Program to submit a waiver that allows the State to exempt Indian Health Services (IHS) and 638 facilities from the benefits and eligibility restrictions imposed upon the broader AHCCCS program. Because Medicaid covered services provided by IHS and 638 facilities are funded with 100% federal dollars, the application of the reductions to these facilities yielded the State no savings. However, without the exemption, the impact these facilities would experience would certainly be significant. When considering the federal funding stream and existing health disparities among the American Indian/Alaska Native

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(AI/AN) population served by IHS and 638 facilities, the State agreed to press ahead with the waiver request in partnership with Arizona's 22 tribes.

### *The Progression of Arizona's Waiver Request*

This waiver concept first was submitted to the Centers for Medicare and Medicaid Services (CMS) in June 2010 as Arizona began preparing for a series of benefit reductions that were scheduled to begin October 1, 2010. Later in the summer of 2010 and as part of a broader 1115 amendment, Arizona asked CMS to include language exempting IHS and 638 facilities from the benefits reductions. That request remained unresolved and was later expanded to include an exemption to the enrollment freeze for childless adults receiving services at IHS and 638 facilities as additional reductions were made to the AHCCCS program.

Tribal leaders provided great leadership in advancing the waiver request and in addressing questions from CMS and its federal partners. IHS and 638 facilities have fulfilled numerous requests for data and additional information. CMS officials were committed to furthering the dialogue, including hosting tribal leaders and the AHCCCS Director, Tom Betlach, in a tribal consultation held in Washington, DC on December 14, 2011. Throughout the process, the AHCCCS Administration continued to maintain an open dialogue with and obtain guidance and direction from its tribal stakeholders. At the consultation on December 14, 2011, the State assured CMS that it would pay the non-federal share for individuals who are not AI/AN.

Following these discussions, CMS sent the State a letter of agreement in principle on February 17, 2012. On April 6, 2012, the State received final approval to move forward with this important initiative to ensure the financial viability of tribal providers by addressing the uncompensated care costs experienced by IHS and 638 facilities as a result of the AHCCCS reductions.

### *Success in Protecting a Vital Safety Net*

The payments made by the State under this authority have been critical to maintaining an appropriate level of staff and services available in IHS and 638 facilities. Reports submitted to the State by IHS and 638 facilities show that these payments warded off staffing reductions and elimination of services, which would have severely impacted an already fragile delivery system that provides critical care for a population struggling to overcome healthcare disparities.

### *Moving Forward: Narrowing the Scope and Contingency Planning*

As originally approved, IHS and 638 facilities had two options through which to claim their uncompensated care costs. Option 1 was an encounter based approach where IHS and 638 facilities would submit tracking sheets to AHCCCS and based on

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number of visits for childless adults or number of services provided that are no longer covered benefits, the AHCCCS administration would make a payment. Option 2 was a per member per month calculated approach that did not require the facilities to submit any claims. Both of these options are detailed in Attachment K.

Under both options, a total of **\$118.3 million** has been paid as of September 2013.

- \$107.9 million (91%) was for services provided to childless adults unable to enroll because of the freeze;
- \$10.3 million (9% was for benefits).
  - Of the benefit amount, wellness exams represented 14% of the overall spend. This benefit for adults was restored effective October 1, 2013.

Most clearly, the childless adult enrollment freeze had the greatest impact to the financial viability of IHS and 638 facilities. With the Governor's leadership, Arizona is restoring coverage for Prop. 204 childless adults beginning January 1, 2014 and is also expanding coverage for adults from 100% to 133% of the federal poverty limit. Nevertheless, the State recognizes that there are challenges to Governor's plan. Currently, 36 legislators are suing the Governor and the AHCCCS Director with regards to the constitutionality of the Hospital Assessment that was included in the Medicaid Restoration legislation, the critical funding mechanism for restoration to occur. Therefore, the State agrees with tribal leaders who have clearly expressed the need to be prepared in the event this or any other challenge halts or delays restoration or expansion. If any challenge is successful, the State's ability to make supplemental payments for childless adult care would be restored, but only under Option 2.

Thus, the State is only affirmatively seeking to move forward with the benefits payments under Option 2. This allows critical services provided by IHS and 638 facilities to continue as coverage increases. Because the take up rate for Marketplace coverage among AI/ANs is expected to lag behind the broader population, continuing these payments for benefits is also needed. And because the State is still struggling to get back to pre-recession fiscal times and is working through restoration and expansion as the priority next step, any restoration of benefits is not anticipated beyond reinstating well exams and eliminating the 25-day inpatient limit.

### **III. Public Process**

This matter has thoroughly been vetted in tribal consultation on numerous occasions, most recently September 19, but also on prior consultations. The State has also

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received input from tribal stakeholders. The State will post this proposal to its 1115 Demonstration page on the AHCCCS website for additional comment.

**IV. Data Analysis- “With Waiver” vs. “Without Waiver”**

The State is providing a revised budget neutrality document that will incorporate this and other aspects of the State’s Transition Plan amendments.

**V. Allotment Neutrality**

The State does not anticipate any change to allotment neutrality since the same services will be provided and the same populations are being served.

**VI. Details**

Currently, the State’s authority to make payments related to benefits no longer covered and services provided to childless adults resides in Costs Not Otherwise Matchable (CNOM), Paragraph #22.

**“22. Expenditures for payments to participating IHS and tribal facilities reflecting uncompensated care, limited to categories of care that were previously covered under the State Medicaid Plan, furnished in or by such facilities to Medicaid-eligible individuals, and other individuals, with family income at or below 100 percent of the FPL.”**

The State is seeking to change this authority such that this provision no longer be set to expire December 31 and would propose to make the following change to that language:

**22. Expenditures for payments to participating IHS and tribal facilities reflecting uncompensated care, limited to: (1) categories of care that were previously covered under the State Medicaid Plan, furnished in or by such facilities to Medicaid-eligible individuals; and (2) other services provided to individuals, childless adults with family income at or below 100 percent of the FPL only if these individuals are not eligible for Medicaid because a legal or other challenge has halted or delayed implementation of restoration of childless adult coverage and expansion to new adults.**

Corresponding changes to **Attachment K: IHS and 638 Facilities Uncompensated Care Payment Methodologies** will also be needed to reflect that (1) payments will **only be made under Option 2**; and (2) claiming for care provided to childless adults would only be compensated if implementation of restoration and expansion is halted

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or delayed. The State is seeking to only use Option 2 because of the high administrative burden in reviewing claims submitted under Option 1. Because the overwhelming majority of the payments made was for childless adult coverage, which is being restored, the State cannot maintain the administrative burden for Option 1 payments solely for benefits.

For further clarification, the attached updated spreadsheet summarizes projections that have been put together by AHCCCS for uncompensated benefits as was discussed in Tribal Consultation September 19, 2013. The model takes the number of American Indian adults currently enrolled in the AHCCCS program (currently 53,080) and multiplies this times the per member per month (PMPM) amount associated with the benefits that were eliminated by AHCCCS in 2010. The enrollment number will be updated quarterly. For example, the model also includes an estimate of what would be paid on a monthly basis if 30,000 American Indians were added to the program as a result of restoration and expansion. These monthly amounts are then allocated by IHS and 638 facilities based on the percentage of payments received in State Fiscal Year 2012 for services provided to American Indian adults enrolled in AHCCCS.

As can be seen in the spreadsheet, the initial projection is that roughly \$742,000 will be paid *monthly* but if the population grows by 30,000, this *monthly* payment would grow to **\$1.162 million**.

Currently this benefit PMPM is \$16.22. This would be reduced by \$2.23, the amount attributable to wellness exams, which have been restored. This new total of \$13.99 would be multiplied by the number of American Indian adults enrolled with AHCCCS. AHCCCS proposes the enrollment number be updated quarterly. The payments would continue to be monthly. The PMPM would be updated annually based on the AIR inflation factor. The allocation would be based on State Fiscal Year 2012 billings for adults and would exclude behavioral health clinics and transportation providers (because they do not provide the benefits that were eliminated/limited). On October 1, 2014, the PMPM amount will be reduced by an additional \$4.83 to reflect the fact that the 25 day inpatient limit will be eliminated going forward.

## **VII. Evaluation Design**

The State would apply the same evaluation criteria to this proposal that it currently applies to this Demonstration.