



STATE OF ARIZONA

JANICE K. BREWER
GOVERNOR

EXECUTIVE OFFICE

March 20, 2009

Charles E. Johnson
Acting Secretary
United States Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Johnson,

I am writing to request reconsideration of a determination by the Centers for Medicare and Medicaid Services (CMS) that Arizona's change in the frequency of Medicaid eligibility redetermination for certain populations constitutes a violation of the maintenance of effort requirements of the American Recovery and Reinvestment Act (ARRA). I strongly disagree with CMS's findings and appreciate your additional attention to this matter.

The ARRA stipulates that a state is ineligible for the increase in the federal medical assistance percentage (FMAP) "...if eligibility standards, methodologies, or procedures under its State plan...including any waiver...are more restrictive than the eligibility standards, methodologies or procedures, respectively, under such plan (or waiver) as in effect on July 1, 2008." For several reasons, I maintain that Arizona's change in the timing of its eligibility determinations does not violate the ARRA requirements.

On June 26, 2008, the Arizona Legislature passed legislation that required Arizona to redetermine Medicaid eligibility for childless adults who are not disabled every six months, rather than once a year. Former Governor Janet Napolitano signed the legislation the following day. Pursuant to the Arizona Constitution, which provides a delayed effective date for non-emergency legislation, the change in redeterminations was not implemented until September 26, 2008. However, it is clear that the decision to change the timing of the redetermination was made before the July 1, 2008 deadline.

Further, the shift to more frequent eligibility determinations is clearly not a change to more restrictive standards, methodologies or procedures, but merely a change in timing. Both the Medicaid eligibility standards and the procedures and methodologies by which eligibility is determined are unchanged. The State is simply reviewing whether individuals enrolled in Medicaid are, in fact, eligible for the program. Given federal requirements that the state Medicaid agency "ensure that recipients make timely and accurate reports of any change in circumstances that may affect their eligibility," and "promptly redetermine eligibility when it receives information about changes in a recipient's circumstances that may affect his eligibility" (42 CFR 435.916), it is obvious

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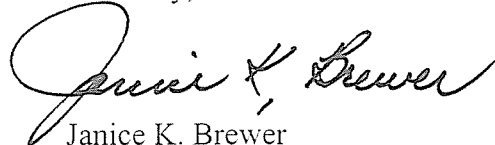
that the federal government recognizes the importance of redetermining eligibility to ensure only those eligible remain on the program. I do not believe Congress intended in the ARRA to preclude states from ensuring that individuals enrolled in the Medicaid program actually meet the State's eligibility standards.

Moreover, the change in frequency of eligibility determination did not result in a change of "standards, methodologies or procedures under its State plan...including any waiver," as nowhere in the Arizona State Plan or Arizona's approved section 1115 demonstration waiver is there a direct reference to the frequency of redetermination of eligibility, either prior to or after July 1, 2008. As such, there is no basis for a determination by CMS that Arizona is not eligible for an increase in federal financial participation based on the frequency of redeterminations.

In light of these reasons, I respectfully request that you reverse the CMS decision regarding Arizona's ineligibility for the increased FMAP under the ARRA. Because this decision has a direct impact on Arizona's budget in the current state fiscal year, I ask for your prompt attention to this matter and request a response by April 1, 2009.

I know you are mindful of the fiscal struggles many states are facing and that these struggles may continue beyond the period in which we will receive stimulus funding. To preclude states from preserving the integrity of the Medicaid program and implementing legitimate administrative tools that ensure public dollars are being spent on those truly eligible does a disservice to both states and the federal government.

Sincerely,



Janice K. Brewer
Governor

JB:bk1

cc: Senator John McCain
Senator Jon Kyl
Representative Ann Kirkpatrick
Representative Trent Franks
Representative John Shadegg
Representative Ed Pastor
Representative Harry Mitchell
Representative Jeff Flake
Representative Raul Grijalva
Representative Gabrielle Giffords
Charlene Frizzera, Acting Administrator, Centers for Medicare & Medicaid Services

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President Robert "Bob" Burns, Arizona State Senate
Speaker Kirk Adams, Arizona House of Representatives
Senator Chuck Gray, Arizona State Senate
Senator Jorge Garcia, Arizona State Senate
Representative John McComish, Arizona House of Representatives
Representative David Lujan, Arizona House of Representatives
Kevin Tyne, Chief of Staff, Office of the Governor
Eileen Klein, Director, Office of Strategic Planning and Budgeting
Anthony Rodgers, Director, Arizona Health Care Cost Containment System
Richard Stavneak, Director, Joint Legislative Budget Committee