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7TH DISTRICT OF ARIZONA

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The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, NW
Washington, DC 20201

Dear Secretary Sebelius:

On January 25, 2011, Governor Jan Brewer submitted a letter of request to the Department of Health and Human Services (HHS) for a waiver from the maintenance of effort (MOE) requirement in P.L.111-148. I strongly oppose the proposed exemption and urge you to uphold the law to the strictest standard. Additionally, I request that this action be expedited to ensure that the state may proceed with its budget process.

The proposed waiver would facilitate the legislature's attempt to slash health care for nearly 300,000 Arizonans. This population includes more than 5,000 seriously mentally ill individuals. As Arizona is just stepping onto the road to recovery from the horrific events of January 8th, I implore you to take into account the critical effects this waiver could have on those populations.

The MOE in P.L.111-148 states: *"as a condition for receiving any Federal payments under section 1903(a) for calendar quarters occurring during such period, a State shall not have in effect eligibility standards, methodologies, or procedures under the State plan under this title or under any waiver of such plan that is in effect during that period, that are more restrictive than the eligibility standards, methodologies, or procedures, respectively, under the plan or waiver that are in effect on the date of enactment of the Patient Protection and Affordable Care Act."* The legislation was written explicitly to ensure the sanctity of Medicaid and CHIP programs from the very waiver Arizona is requesting. It is not the intent of the waiver authority to permit infringement on this very specific protective language.

Unfortunately, the mal intent of the State is clear; their letter of request states: "Arizona is requesting to reduce eligibility for approximately 280,000 individuals in the expansion group know as Proposition 204." The State has already stripped health care away from Arizona children at an appalling rate. In November 2009 the Arizona CHIP program served 46,800 children, the Joint Legislative Budget Committee estimates that by 2015 not a single child will be left in the program. Congress took legislative action in the P.L. 111-148 to ensure other states did not follow this destructive path. Now we must ensure Arizonans are not left in a position with no recourse and in dire need of health care services once again.



This waiver would only augment the continued budget crisis in the State. The loss of federal matching funds and the increased burden on our hospitals would be unbearable. I fought hard to provide the state of Arizona with needed additional funds this situation demanded. The American Recovery and Reinvestment Act (P.L. 111-5) included a temporary increase in the Federal Medical Assistance Percentage (FMAP), which was then extended by an additional six months by P.L. 111-226. Through September 30, 2010, this temporary increase has yielded an additional \$1.7 billion for Arizona (\$763 million for FY2009 and \$940 million for FY2010 through September 30, 2010).

Furthermore, waiving the maintenance of effort requirement would put the Arizona State Legislature in a position to violate the Arizona State Constitution. Arizona Voter Initiative, Proposition 204, passed an expansion of eligibility for their Medicaid program to persons who are uninsured and have annual incomes less than 100% of the Federal Poverty Level. Legislation to eliminate health care for this population will violate ARTICLE IV, PART 1, SECTION 1, (6) of the Arizona Constitution which states: "*The legislature shall not have the power to repeal an initiative measure approved by a majority of the votes cast thereon or to repeal a referendum measure decided by a majority of the votes cast thereon.*" When granting an individual state any waiver it is essential for HHS to consider the unique conditions of the state. In this situation, the granting of a waiver in Arizona could tie up more of the state's funds in lawsuits over the constitutional legitimacy of this act and be a detriment to the very people the department is meant to serve.

The recession has taken a heavy toll on our society and has caused the very safety net programs we rely on as Americans to be overwhelmed. However, slashing the programs that have prevented further societal hardships would be a mistake. HHS was given the waiver authority in the case of unforeseen circumstances that would make a waiver necessary to prevent greater harms, and should not be used to permit a state to make a brash decision in the face of trying times. I urge you to interpret and execute the MOE requirement as the law was intended by the U.S. Congress: deny Arizona's waiver request and ensure the state does not suffer greater burdens from the nearly 300,000 people that stand to lose access to health care.

Sincerely,



Raúl M. Grijalva
Member of Congress