

# Health Care Reform: FINDING YOUR WAY

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## Impact of Health Reform's “Maintenance of Effort” Provisions on Arizona's Health Care Programs

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### EXECUTIVE SUMMARY

The Patient Protection and Affordable Care Act (PPACA) requires states with existing Medicaid expansion and children's health insurance programs to maintain these programs with the same eligibility standards, methodologies, or procedures in effect under the State's Medicaid plan on March 23, 2010 for the next several years. As a result, PPACA will require the Arizona legislature to continue to fund Arizona's Prop 204 AHCCCS expansion population and reenact the state's children's health insurance program. If Arizona fails to do so, the state risks losing all of its federal matching Medicaid funds.

### BACKGROUND

Earlier this year, the Arizona legislature decided to eliminate state general fund appropriations for Arizona's Prop 204 Medicaid expansion program (childless adults) and place an enrollment cap on Arizona's children's health insurance (KidsCare) program. The legislature later repealed the entire KidsCare program and authorized AHCCCS to reduce eligibility standards from 100% of the federal poverty level (FPL) to 50% of the FPL for certain AHCCCS members.

On December 30, 2010, AHCCCS sent a letter to the Centers for Medicare and Medicaid Services (CMS) requesting an amendment to its KidsCare state plan to reflect the enrollment cap. CMS approved this enrollment cap effective January 1, 2010.

On March 18, 2010, AHCCCS sent a series of letters to CMS, notifying it of its intent to amend Arizona's state Medicaid and children's health insurance plans in order to implement the legislature's remaining directives. AHCCCS stated in these letters that it intended to limit its

Prop 204 population to only those persons entitled to Supplemental Security Income benefits, terminate Arizona's KidsCare program, and reduce the federal poverty level eligibility standard for its mandatory categorically needy population (excluding pregnant women and infants) from 100% to 50%. AHCCCS stated that the state plan amendments would be effective January 1, 2011, with the exception of the termination of the KidsCare program, which would be effective June 15, 2010.

On March 23, 2010, the President of the United States signed PPACA, which places several obligations on states with existing Medicaid expansion and children's health insurance programs. PPACA effectively reverses the Arizona legislature's actions and significantly impacts the legislature's ability to reduce funding to, or change eligibility standards for, these programs in the future.

### **RELEVANT PPACA PROVISIONS**

PPACA provides additional federal funding for states that have expansion and children's health insurance programs beginning in 2013-2014, depending on the type of program. PPACA also contains "maintenance of effort" (MOE) provisions that require states to continue to fund their Medicaid and Medicaid expansion programs until the health reform exchanges, set forth in PPACA, are established, which is expected to be in 2014. The MOE for children's health insurance programs applies until 2019.

Specifically, PPACA states that "as a condition of receiving any federal payment" under a state's Medicaid plan, the state may not implement any "eligibility standards, methodologies, or procedures under the State plan...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 PPACA. A state's "determination of income" is not an "eligibility standard, methodology, or procedure" subject to this MOE provision. There are, however, some limitations to AHCCCS' ability to change its income determination process.

PPACA contains an exemption for states that have, or are projected to have, a budget deficit, but only for non-pregnant, non-disabled adults who are eligible for medical assistance under the state plan and whose income exceeds 133% FPL.

### **WHAT THIS MEANS FOR ARIZONA'S HEALTH CARE PROGRAMS**

PPACA's MOE provisions limit the legislature's ability to eliminate funding for Arizona's Prop 204 population, eliminate the KidsCare program, or reduce the FPL eligibility standard for the mandatory categorically needy population. While AHCCCS requested a waiver to its state plan to implement these legislative proposals, AHCCCS stated that the waivers and amendments would not apply until June 15, 2010, at the earliest. As a result, the AHCCCS state plan "in effect" as of PPACA's enactment is the plan that is in effect today, which does not include the Arizona legislature's funding cuts, repeals, or changes in AHCCCS eligibility standards. Further, since Arizona's current FPL eligibility standard is below 133%, Arizona is not eligible for the MOE exemption.

PPACA will not, however, impact the legislature's enrollment cap on Arizona's KidsCare program. CMS approved the enrollment cap as part of Arizona's state plan effective January 1, 2010, which was prior to PPACA's enactment. This means that the legislature may reenact KidsCare with an enrollment cap, which will limit the number of children eligible for this program.

Arizona's providers will benefit from PPACA in that Arizona's AHCCCS expansion and KidsCare programs will continue exist and will be fully funded at least until 2014. While it may be a challenge for Arizona and its legislature, the state will need to find a funding source for these programs or lose a significant amount of federal funds. If Arizona attempts to implement any of the legislature's changes, as planned, it risks losing all of its federal funding related to its Medicaid program, not just the federal funding associated with specific programs.

### **POTENTIAL ISSUES TO LOOK FOR IN THE FUTURE**

The MOE's reference to "eligibility standards, methodologies, or procedures" under the state plan in effect at the time of PPACA's enactment are not clearly defined. There will likely be discussion, and potentially litigation, over whether certain state changes to their state plans constitute eligibility standards, methodologies, or procedures subject to the MOE. CMS will likely promulgate regulations that will further define these terms.

Several states intend to challenge the legality of PPACA and the MOE provisions. It is uncertain what the effect of these lawsuits will have on the enforceability of these provisions in the future. It is also possible that states will seek an amendment to PPACA to make the MOE provisions less restrictive.

If the state is unable to continue to fund its AHCCCS programs, as required by the federal government, then the Arizona legislature may consider forgoing billions of dollars of federal funds and opt out of the Medicaid program altogether. We certainly doubt that the legislature would take such a drastic action, but if it did, we believe that there are strong legal arguments that such an action is prohibited by law.

### **FOR MORE INFORMATION, CONTACT A MEMBER OF OUR HEALTH CARE GROUP**

This Client Alert is the first in the "Finding Your Way" advisory series, designed to assist our clients and other health care providers as they prepare to respond to health care reform. Future articles will include discussions regarding PPACA's criminal enforcement, employment, Stark self-disclosure, civil fraud and abuse, accountable health organization, and health information technology provisions.

For questions about the information contained in this Alert, or any other questions regarding health care reform, please contact Julie Nelson at 602-381-5465 or [jnelson@csblaw.com](mailto:jnelson@csblaw.com) or any other member of the CSB Health Care Law Group:

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