December 4, 2015

The Honorable Sylvia Mathews Burwell, Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Dear Secretary Burwell,

The undersigned organizations write in response to your request for public comments on Arizona's proposed new Section 1115 Medicaid demonstration, the AHCCCS CARE program. Our comments are limited to the provisions of the state's proposal that would alter its existing Medicaid expansion.

Arizona is the first state to request a waiver to alter implementation of its Medicaid expansion after initially expanding through a state plan amendment. Arizona's uninsured rate has dropped from 20.4 percent to 14.5 percent since health reform's coverage provisions took effect in 2014,[1] and these gains are due in large part to the state's decision to expand Medicaid. The state estimates that, if approved, as many as 571,000 current adult Medicaid beneficiaries would be enrolled in the AHCCCS CARE program and be subject to its premium and co-pay obligations, work requirement, and five-year lifetime limit on coverage.

We believe requests from states that have already expanded should be evaluated differently than requests from states seeking to expand through a waiver in the first instance. The state should be required to articulate a sound hypothesis tied to a purpose that would promote the objectives of the Medicaid program. Changes to a state's program should not be approved if the waiver would make it harder for the expansion's target population of non-disabled adults to enroll in and maintain coverage, and obtain critical health services. Put another way, *CMS should reject a proposal that would leave Medicaid expansion beneficiaries worse off than they are in the absence of the requested changes.*

Arizona's proposal should be rejected because the proposed premiums and co-pays, the work requirement, and the lifetime limit on Medicaid coverage would cause significant numbers of people to lose coverage or make it harder for them to obtain needed care. Moreover, the five-year limit and the work requirement should not be approved by CMS under any circumstances — for a new expansion or an existing one.

Our specific comments on the components of the waiver proposal follow:

No demonstration hypothesis. It is unclear whether this is a new demonstration or an amendment to the state's existing 1115 demonstration. Arizona Governor Doug Ducey says in his cover letter that the state is requesting a new 1115 demonstration and the state's request for a five year approval is in line with the time period for new demonstrations. However, in its October 22 completeness letter to the state, CMS refers to the proposal as

[1] Dan Witters, "In U.S., Uninsured Rates Continue to Drop in Most States," *Gallup*, August 10, 2015, http://www.gallup.com/poll/184514/uninsured-rates-continue-drop-states.aspx.

an amendment to AHCCCS. Even if the proposal is an amendment rather than a new proposal, it represents such a sharp departure from the existing AHCCCS program that the state needs to explain what it is attempting to demonstrate and how its project would assist in promoting the objectives of the Medicaid program. As noted, the need for a strong and sound demonstration purpose is especially important given that the state estimates the proposal would affect coverage for as many as 571,000 current Medicaid beneficiaries.

Premiums and co-pays for adult Medicaid beneficiaries. The state has requested a waiver to charge premiums equal to 2 percent of annual household income or $25 a month, whichever is less, to most non-disabled adults who receive Medicaid coverage, even those with income below the poverty line. It is unclear whether the state is proposing to charge this premium to each individual or each household. The state's list of proposed waivers and expenditure authorities refers to the enacting legislation (SB 1475), which clearly states the premium would be equal to 2 percent of the "person's" household income. If this is the case, the state is proposing to charge an eligible couple as much as $600 per year ($300 each) in premiums.

It is also unclear how co-pays would be paired with the premium obligations. The proposal says the state would charge copays "up to 3 percent of annual household income," and premiums "up to 2 percent of annual household income" (page 2 of section 3 of the proposal). In his cover letter to the application, Governor Ducey says co-pays will be "strategic" and will be collected if a person visits an emergency room for a non-emergent reason, visits a specialist without getting a referral from a primary care physician, or misses an appointment. Yet the state has also said it intends to charge co-pays "to the maximum extent allowed under federal law" as directed by the legislature," including a $25 co-pay for non-emergency use of the emergency room that the state seeks under the authority of section 1916(f) of the Social Security Act. A more precise request is needed.

The state's premium and cost-sharing proposals should be rejected, regardless of the structure the state is actually proposing:

- A robust body of research already shows that charging premiums and co-pays to people living in poverty makes it less likely that they will enroll in coverage and obtain needed care.[2]

- A $25 charge for non-emergency use of the emergency room is already being tested in Indiana under its expansion waiver, so there is no reason to grant another state a similar waiver until the evidence from Indiana is collected and more is known about the extent to which higher co-pays deter emergency room use. States such as Georgia and New Mexico have found ways to lower emergency room use by expanding access to primary care services and targeting populations more likely to

[2] Office of the Assistant Secretary for Planning and Evaluation, "Financial Condition and Health Care Burdens of People in Deep Poverty," July 16, 2015, http://aspe.hhs.gov/basic-report/financial-condition-and-health-care-burdens-people-deep-poverty.

visit the emergency room, and have done so without charging excessive co-pays.[3] If Arizona is truly concerned about inappropriate emergency room usage, it can adopt one of these models.

- The 5 percent combined cap on premium and cost-sharing charges, which the state has incorporated as the maximum amount of combined co-pays and premiums, is a backstop that is designed to protect people against catastrophic expenses similar to the out-of-pocket limit in private insurance. In Medicaid, where premiums and cost-sharing are only allowed in limited circumstances, it should rarely or ever be met, and it should not be treated as a standard for what is allowable. This appears to be what the state is planning by saying it would charge premiums at 2 percent of income and co-pays at 3 percent.

The proposal is vague about what happens to people who miss their premium payments. For those with incomes above the poverty line, the state is proposing to lock them out of coverage for six months, and it appears this lockout would continue for the full time period — even if the person makes their back payments. For persons undergoing treatment for conditions like cancer, a six month interruption in their care could be a matter of life and death. Indiana was granted authority to test a similar six-month lockout on beneficiaries above the poverty line so there is no reason to allow another state to test the same structure until information from Indiana is gathered and evaluated.

For people with incomes below the poverty line, unpaid premiums would not result in disenrollment, but would be treated as a debt owed to the state. If CMS allows Arizona to charge premiums, more information is needed on how beneficiaries both above and below the poverty line would be treated if they miss a premium payment since the state only says that its Department of Revenue will figure out "how to best operationalize the program" (page 4 of section 3 of the proposal).

Lifetime limit for Medicaid eligibility. The state proposes to impose a five-year lifetime limit on Medicaid eligibility for "able-bodied" adults. Medicaid is a critical part of health reform's continuum of coverage, which assures non-elderly adults access to coverage even if their income fluctuates or their job status changes over time. Moreover, many low-income adults eligible under the Medicaid expansion are working, but don't have access to job-based coverage. A time limit on coverage in Medicaid has never been allowed, and Arizona's proposal to terminate coverage after five years should be rejected.

AHCCCS CARE account. The state proposes that each AHCCCS CARE beneficiary would have an account, into which their premium and co-payment obligations would be paid. Beneficiaries can then use the money in their account to pay for non-covered services, such as dental services, but only if they make their required payments, participate in the Healthy Arizona wellness program, *and* the AHCCCS Works employment support program.

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[3] Jessica Schubel and Judith Solomon, "State Can Improve Health Outcomes and Lower Costs in Medicaid Using Existing Flexibility," Center on Budget and Policy Priorities, April 9, 2015, http://www.cbpp.org/research/health/states-can-improve-health-outcomes-and-lower-costs-in-medicaid-using-existing

More information is needed on how these accounts would work, especially as they relate to the accompanying proposed wellness and employment support programs. Under the state's proposal, a beneficiary can have their premium and co-pay obligations lowered if their employer contributes to their AHCCCS CARE account. This disadvantages workers whose employers do not contribute, the self-employed, and people between jobs. For those workers who are employed in small businesses this structure would create an additional administrative burden on those small business owners who would not like to disadvantage their workers.

AHCCCS Works. As with the premium and co-pay structure, there are overlapping and contradictory proposals regarding the AHCCCS Works employment support program included in the request. In his cover letter Governor Ducey says participation in AHCCCS Works is not a condition of eligibility. Yet the state has requested a waiver to require "all able-bodied adults" to work, be engaged in a job search, or attend school or a job training program. Medicaid is not an employment program; its purpose is to provide health coverage to people who cannot afford it, and any effort to tie eligibility to work-related requirements should be rejected.

Non-Emergency Medical Transportation (NEMT). The state provides no rationale for its proposal to eliminate the NEMT benefit, and its proposal should be rejected. NEMT is a critical benefit for many Medicaid beneficiaries, especially those with serious health needs. According to data collected by the Community Transportation Association of America from a transportation broker that administered the NEMT benefit in 39 states between January and November 2013, half of all NEMT trips were provided to people who accessed dialysis treatment (17.8 percent) or behavioral health services (33.1percent).[4]

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CMS' response to Arizona's proposal will set important precedents for the rest of the country. Ohio's legislature has directed the state to submit a waiver request to charge premiums to all non-disabled adults, and Kentucky's new governor is contemplating a waiver to promote "personal responsibility" and limit eligibility for coverage. Rather than helping to make further progress in cutting Arizona's uninsured rate, the proposed changes to AHCCCS CARE would cause the state to go in the opposite direction as many current beneficiaries would likely forgo needed care or lose their health coverage altogether. We urge CMS to reject the state's proposal and send a clear signal to other states that it will not consider proposals that would lead to coverage losses among the Medicaid expansion population.

Thank you for your willingness to consider our comments. If you would like any additional information, please contact Joan Alker (jca25@georgetown.edu) or Judy Solomon (solomon@cbpp.org).

American Association on Health and Disability

[4] "Medicaid Expansion and Premium Assistance: The Importance of Non-Emergency Medicaid Transportation (NEMT) To Coordinated Care for Chronically Ill Patients," MJS & Company, March 2014, http://web1.ctaa.org/webmodules/webarticles/articlefiles/NEMTreportfinal.pdf

American Cancer Society Cancer Action Network
American Congress of Obstetricians and Gynecologists
American Congress of Obstetricians and Gynecologists, Arizona Section
American Music Therapy Association
Center on Budget and Policy Priorities
Community Catalyst
Community Transportation Association of America
Families USA
First Focus
Georgetown University Center for Children and Families
National Women's Law Center
National Alliance of State & Territorial AIDS Directors
National Alliance on Mental Illness
National Alliance on Mental Illness Arizona
National Association of Community Health Centers
National Health Law Program
National Multiple Sclerosis Society
Service Employees International Union