



## Arizona Hospital and Healthcare Association

Arizona Health Care Cost Containment System  
Office of Administrative and Legal Services  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
Attention: Mariaelena Ugarte

Dear Ms. Ugarte:

On behalf of the Arizona Hospital and Healthcare Association (AzHHA) and our 104 member hospitals, I thank you for the opportunity to comment on the Arizona Health Care Cost Containment System Administration's (AHCCCS) proposed exempt rulemaking regarding the phase-out of eligibility for the Medical Expense Deduction (MED) coverage. The proposed rule, R9-22-1442, would permanently cease enrollment in the MED program for persons eligible on or after May 1, 2011. Because of the length of eligibility for this program, no persons would be covered under the program after September 30, 2011.

**AzHHA opposes the phase-out and ultimate elimination of the MED program.** This program currently covers approximately 5,800 Arizonans who normally would not qualify for AHCCCS because their household income is more than 100 percent of the federal poverty level (FPL). The MED program beneficiaries qualify because they have incurred significant healthcare expenses through a catastrophic medical event that reduces their countable income to less than 40 percent FPL. These individuals do not have any other health insurance, and have typically had their monthly income interrupted by an accident or extended serious illness. The MED program is a short-term program with blocks of eligibility lasting anywhere from three to six months, depending on household circumstances.

The hospital community is deeply concerned about the impact of the MED program elimination on Arizona residents who otherwise would have been eligible for the program and the healthcare providers who care for them. Patients in the MED program are at their most vulnerable; they have a catastrophic need for high-acuity medical care, and are often struggling to recover from a traumatic injury or a severe illness that has rendered them unable to work. This set of circumstances could happen to anyone, and AHCCCS' current program helps people unfortunate enough to be in this situation to pay their medical bills, which could otherwise force them into bankruptcy. As part of the healthcare community, we are concerned that elimination of this program will put added and unnecessary financial stress on many patients whose primary focus should be on their recovery.

Elimination of this program will also financially strain hospitals and caregivers. While the number of patients covered by the MED program is small compared to AHCCCS' overall enrollment, the proportional cost of covering this group is much higher due to the catastrophic and emergent nature of the injuries or illnesses MED enrollees experience. As you know, individuals who apply for this coverage are usually hospitalized on the date of their enrollment with AHCCCS, and have already incurred, or are estimated to incur, medical bills that render them medically indigent.

Hospitals bear a large portion of this cost. In calendar year 2009, AHCCCS payments to hospitals for the MED program totaled more than \$136 million, with more than \$21 million paid to 25 rural hospitals. If the MED program is phased out on October 1, 2011, AzHHA estimates that hospitals will lose approximately \$70 million for the nine-month period of FY 2012. Most of this will translate directly into uncompensated care, because the hospitals must care for these patients anyway. These are not patients who are over-utilizing services; this truly is a medically needy and particularly vulnerable population.

Thirty-three states and the District of Columbia currently provide similar coverage for uninsured individuals who have "spent down" their resources due to catastrophic illness or injury. Arizona has provided coverage for this spend-down population (formerly known as the Medically Needy, Medically Indigent (MNMI) program) essentially since AHCCCS' inception, and long before the state received any federal matching funds for this group or expansion groups covered under Proposition 204. In the wake of Proposition 204, the state Legislature eliminated the old MNMI program, including county funding sources. If the current MED program is eliminated, for the first time in some 26 years, there will be no safety net for this vulnerable population – except hospital emergency rooms and trauma centers.

AzHHA has joined a coalition of healthcare stakeholders to propose a set of healthcare assessments to be used as a dedicated revenue stream for the Proposition 204 population, including the MED Program, which was established in the Proposition 204 implementation legislation. If approved by the Arizona Legislature and the Centers for Medicare and Medicaid Services (CMS) in the coming months, the annualized assessments would provide up to \$465 million in state funds for the Proposition 204 and MED populations on an annualized basis. The size of the program would be tied to available funding. The dedicated healthcare assessments would eliminate the need for state general fund support of the MED Program, making the proposed rule unnecessary.

Although the Legislature is poised to adjourn *sine die* in the coming weeks, it is possible that it could reconvene in a special session this summer to take up a special healthcare assessment. A number of scenarios could affect this, including the outcome of potential litigation over Proposition 204 and CMS' action on the governor's Medicaid reform plan. With this in mind, we urge the administration to modify the proposed rule by, at a minimum, adding a subsection B stating:

B. Notwithstanding subsection A, the Department shall  
reinstate coverage under the MED program if the Legislature

appropriates dedicated revenues or dedicated revenues are made available to the program through the initiative or referendum process.

Alternatively, we urge the Administration to repeal the rule on and after June 30, 2012. The authorizing statute cited in the preamble, as well as S.B. 1619, budget reconciliation; health; 2011-2012, requires the Administration to adopt rules regarding eligibility necessary to implement a program *within available appropriations*. Since the Legislature appropriates funds for AHCCCS on a fiscal year basis, AHCCCS does not possess the authority to permanently eliminate eligibility for this program. *See, e.g., Sharpe v. Arizona Health Care Cost Containment System*, 220 Ariz. 488, 207 P. 3d 741 (Ariz. App. 2009) (“rule or regulation of an administrative agency should not be inconsistent with or contrary to the provisions of a statute, particularly the statute it seeks to effectuate” quoting *Ferguson v. Ariz. Dep't of Econ. Sec.*, 122 Ariz. 290, 292, 594 P.2d 544, 546 (App.1979)).

Thank you in advance for considering these comments. Please feel free to contact me if you have any questions.

Sincerely,



Laurie Liles  
President and Chief Executive Officer