



NHLP Breaks Down the Arizona Maintenance of Effort Issue

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On February 15th, HHS Secretary Kathleen Sebelius sent a [letter](#) to Arizona Governor Jan Brewer in which the Secretary did not volunteer to waive the ACA's Maintenance of Effort (MOE) provision as the Governor had requested, though the Secretary did point out that some Arizona populations could ultimately be disenrolled without waiver authority.

BACKGROUND

On January 25, 2011, Governor Brewer submitted a [request](#) asking HHS to use its Social Security Act section 1115 demonstration authority to waive the Maintenance of Effort requirement in the ACA, which prohibits the state from reducing eligibility in Medicaid prior to 2014. At the time she made the request the Governor explicitly stated her intent to use the waiver authority to terminate about 280,000 adults enrolled in Medicaid. Of the 280,000:

- About 244,000 are childless adults who are not otherwise Medicaid eligible populations
- About 30,000 are parents (for whom Brewer was proposing to lower the eligibility threshold from 100% FPL to 50% FPL)
- About 6,000 are very low-income families and individuals who qualify by spending their income down to 40% of the federal poverty level

Note: Although Arizona has a state plan and covers some populations through a state plan and others through demonstration authority, Arizona's entire Medicaid program is run through a Medicaid managed care 1115 demonstration. In this issue brief we will refer to both Arizona's existing Medicaid 1115 demonstration programs, and its separate request for additional waiver authority to ignore the MOE.

THE HHS RESPONSE

The HHS response does not present any surprises or new interpretation of law around the MOE, and to be clear, *there was no waiver of the MOE provision.*

- **The HHS response does not grant Arizona authority to terminate individuals enrolled in optional (or mandatory) Medicaid categories of coverage included in the state plan.** And, there is no indication that the Secretary would be willing to waive the MOE for anyone who is actually covered through demonstration authority, but *could* be covered in a state plan population.
- **The HHS response does not grant Arizona authority to terminate individuals enrolled in on-going demonstration programs, or terminate these programs before the date they are already set to expire** (in this case September 30, 2011).
- The HHS response does explain that Arizona has the authority to choose not to renew its current demonstration programs when they expire. HHS's position is that the MOE doesn't require a

state to renew an expiring demonstration program. However, **this non-renewal exception is applied only to populations “whose eligibility derives from the demonstration”** – NHeLP interprets this legally to mean only populations who could not otherwise be eligible as a state plan population. Consistent with this interpretation, the HHS letter specifically mentions the childless adult population as an example of such a population.

Note: Some media reports and Arizona officials have not correctly characterized the HHS response.

THE OUTLOOK IN ARIZONA

Although the HHS letter does not provide any surprises, the practical effect of the MOE not applying to non-renewal is significant for Arizona, because the current demonstration that covers these populations expires on September 30, 2011, at which time Arizona could choose to not renew eligibility for at least some populations. At the very least, the proposed eligibility cutbacks could (subject to the below paragraph) be permissible for 244,000 childless adults who are not a potential state plan population. The 30,000 parents, who are a state plan population, should not be cut off through the non-renewal. The same should be true for at least some of the spend-down population, though some press reports imply that Arizona officials are lumping this population in with the 244,000 childless adults when publicly discussing what cuts would be allowed. In order to cut off any populations through non-renewal, Arizona would need to file a timely demonstration phase-out plan by March 31, 2011. If allowed to occur, the proposed eligibility cutbacks would be devastating to the health of upwards of a quarter-million Arizonans and harmful to the Arizonan state and local economies and health systems.

Although Federal Medicaid process may allow for Arizona to terminate some populations through non-renewal of its demonstration on September 30, 2011, the terminations are not currently permissible under state law. The populations among the 280,000 at dispute in this waiver request were added by a vote of the people of Arizona when they passed Proposition 204 in 2000. As such, their eligibility cannot be repealed by the Governor but rather can only be overturned by a vote of the people.

THE OUTLOOK NATIONALLY

Unfortunately, the HHS letter highlights the fact that states can allow current section 1115 projects to expire without running afoul of the ACA MOE requirements for at least certain populations. This will likely be an issue as projects reach their expiration dates amidst state budget shortfalls.

However, the letter does include some constructive suggestions, as the Secretary has not granted a waiver exception to the MOE requirements and has encouraged Arizona to focus on Medicaid changes that will contain costs by achieving efficiencies through policies that manage diseases and chronic conditions. The Secretary has also explicitly suggested the possibility of a provider assessment as a way to generate revenue and address budget shortfalls.

The lesson for state advocates is to identify what populations may be covered under soon-expiring demonstration authority and what state processes are necessary to allow the demonstrations to expire. It is critical for state advocates to identify the impacts “non-renewals” could have on the health of state residents, the state and local economies, and the state health system. State advocates should also be prepared to suggest cost containment measures that, if implemented, will reduce expenditures without harming people in need (watch NHELP’s website for a forthcoming memo that will make such suggestions).