Phoenix Health Plan

tenet HEALTH

January 2, 2015

HAND DELIVERED AND
SENT VIA E-MAIL

Tom Betlach
Director
Arizona Health Care Cost Containment System
801 East Jefferson
MD 4100
Phoenix, Arizona 85034

Subject: Cap Lift Request - Response to Request For Information

Dear Director Betlach:

Thank you for considering Phoenix Health Plan's ("PHP") November 25, 2014 request ("Request") to lift the enrollment cap on the acute care contract awarded to PHP for GSA 12 (Maricopa County). RFP YH14-0001(the "RFP") authorized Unsuccessful Incumbent Contractors providing services under RFPYH09-0000 in Maricopa or Pima County to request in writing to have enrollment capped so that they could continue to offer services in accordance with the terms of the RFP.[1] As an incumbent contractor providing services in the Maricopa and Pima GSAs, and pursuant to this section of the RFP, PHP requested that AHCCCS award PHP a capped contract. AHCCCS accepted PHP's request, and awarded the capped contract for GSA 12 (Maricopa County) on March 29, 2013 ("Contract Award Letter").

The RFP also stated, and the Contract Award Letter reiterated, the conditions under which the enrollment cap could be lifted. As noted in the Request, the RFP and the Contract Award Letter state that AHCCCS may lift the cap if any one of three circumstances exist:

a. Another Contractor is terminated and increased member capacity is needed, or
b. Legislative action creates an unforeseen increase in the overall AHCCCS population, or
c. Extraordinary and unforeseen circumstances make such an action necessary and in the best interest of the State.

The Request established that over the past 15 months, extraordinary and unforeseen circumstances exist such that it is in the best interest of the State to lift the cap on enrollment in PHP. We received your letter dated December 17, 2014 posing seven questions requesting additional information, and we provide this response in support of our Request.

[1] AHCCCS RFP YH14-0001, Section H, Part 9, *Award of Contract*, p. 292.

I. RESPONSE TO AHCCCS' REQUESTS

1. PHP's Request Upholds And Adheres To The Process AHCCCS Established In The RFP And The Contract Award Letter.

AHCCCS requested that PHP explain how PHP's request to lift the cap upholds the procurement process. PHP's request upholds the procurement process because the Request is submitted in accordance with the terms AHCCCS established in the RFP and the Contract Award Letter, which specifically state that PHP may request that the enrollment cap be lifted.

The Request and evidence supporting it are well within the terms of the RFP and the Contract Award Letter. AHCCCS acknowledged this in its April 24, 2013 letter to Bridgeway, an unsuccessful bidder under the RFP that filed a protest and complained of, among other things, the capped contract awarded to PHP. In denying Bridgeway's protest, AHCCCS stated, "AHCCCS awarded a capped contract to PHP consistent with the terms of the RFP notwithstanding PHP's lower score."[2] Bridgeway was not an incumbent contractor and therefore did not qualify for a capped contract, regardless of RFP scoring.

The process established in the RFP for awarding capped contracts does not authorize the award of capped contracts to bidders who are not incumbent contractors, nor does the process authorize awarding new contracts to Bridgeway or any other plan in lieu of lifting a capped contract after the RFP has concluded. Rather, the RFP only authorizes awarding capped contracts to incumbent contractors, and authorizes lifting the cap from such a contract at some point after the contract has been awarded.

AHCCCS's decision to award a capped contract to PHP reflected the process established by the RFP, which stated (i) that AHCCCS has the discretion to award capped contracts and (ii) the conditions under which any such caps could be lifted.[3] As an incumbent contractor - providing services to AHCCCS beneficiaries for over thirty years - PHP qualified for a capped contract award, and AHCCCS was well within its discretion to award the contract. Bridgeway, on the other hand, was not an incumbent contractor and therefore did not qualify for a capped contract award.

PHP's Request to lift the enrollment cap is the natural evolution of AHCCCS's decision to award the capped contract. The Request does not implicate any other plan or have any bearing on the rankings or scores in the RFP process. The conditions listed in the RFP and the Contract Award Letter for lifting the cap do not in any way reference or relate to past performance or to the bids submitted for the RFP by PHP or any other plan.

After being under the cap for more than a year, PHP's request to lift the cap is fully consistent with AHCCCS's process set forth in the RFP and the Contract Award Letter.

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[2] AHCCCS letter, April 24, 2013, p. 9.

[3] AHCCCS RFP YH14-0001, Section H, Part 9, *Award of Contract*, p. 292.

As explained in our Request, and further elaborated below in response to AHCCCS's additional questions, there have been several developments and changes over the past 15 months. These events and changes are extraordinary and unforeseen circumstances such that it is now in the best interest of the State to lift the cap and within the State's discretion to do so.

What constitutes extraordinary and unforeseen circumstances is not defined in the RFP, Contract Award Letter, nor in any statute, regulation, or AHCCCS policy. In that context, the dictionary definition may be useful. "Extraordinary," as defined in the Merriam-Webster dictionary, means "going beyond what is usual, regular, or customary." Unforeseen means "not felt or realized beforehand; unexpected."

Although only one extraordinary or unforeseen circumstance is needed for the State to determine lifting the cap is in the State's best interest, the Request, and this letter, provide multiple examples of circumstances and events that meet these definitions, including:

- Instability in the marketplace as a result of the recent trend of purchasing AHCCCS-contracted plans by parties that either lack experience and/or did not participate in the RFP;
- Performance issues with contracted plans that may result in plan departure from the marketplace, contract termination, or other enforcement actions by AHCCCS; and
- A growing Arizona budget shortfall such that increasing enrollment in PHP can assist in reducing due to the relative lower cost of PHP compared to other plans.

As a result, AHCCCS is well within its authority to exercise its discretion, consistent with the RFP and the Contract Award Letter, to lift PHP's enrollment cap.

2. **Allowing Beneficiaries To Enroll In PHP Materially Increases Competition.**

AHCCCS requested that PHP explain how lifting the cap on enrollment would materially increase competition. There are at least four ways competition will be increased by lifting the cap on PHP: (i) allowing beneficiaries to enroll in PHP expands the plan options by 15% in Maricopa County; (ii) removing the cap to allow enrollees to select PHP will decrease risk from concentrated enrollment in only two plans; (iii) PHP is competitive on price, which will favorably affect the current State budget deficit; and (iv) eliminating PHP which is one of the original AHCCCS contractors, in operation since 1983, would be a loss to the State and certainly to the competitive landscape.

(i) *Expands Plan Options By 15%*

Removing the cap will allow AHCCCS beneficiaries to select and enroll in PHP - adding a plan option that currently does not exist. Due to the cap, beneficiaries cannot choose PHP. This limit applies even if our provider care network - such as Abrazo hospitals and its comprehensive system of outpatient, urgent care, emergency care, and physician practices - are located closer to the beneficiaries than any other network. The ability to closely coordinate provider access points with an experienced plan, such as PHP, fosters innovation and integration of care which improves patient outcomes and reduces costs in the system.

In addition, unlike enrollment with the other contracted plans, the auto-enrollment algorithm does not assign new beneficiaries to PHP. As a result, and as expected under an enrollment cap, even in the year and a quarter during which the cap has been in place, PHP has experienced significant decreases in enrollment due to open enrollment and typical attrition that is not offset by new enrollments. By way of comparison, as of Sept. 1, 2013 (the last month before the cap was imposed), 178,994 AHCCCS beneficiaries across nine counties, including 96,325 beneficiaries in Maricopa County, were enrolled in PHP.[4] Since that time, however, enrollment in PHP, as of December 1, 2014, fell to a total of 68,326 beneficiaries, all only in Maricopa County.[5] Due to the cap, this is the lowest enrollment of any of the currently contracted plans.

(ii) *Enhances Competition In The Marketplace*

In Maricopa County, 49% of AHCCCS beneficiaries are currently enrolled in only two plans - Mercy Care Plan and UnitedHealthcare Plan.[6] At 258,539 and 136,121 beneficiaries respectively, these two plans eclipse the closest plan by about fifty thousand enrollees. (The next highest plan, Health Net Access, has 78,734 enrollees). Adding PHP not only increases the plan options for beneficiaries from 6 to 7 (a 15% percent increase in choice, which is significant), but it also further reduces reliance on the two largest plans and ensures that the system continues to have capacity to serve all AHCCCS beneficiaries promptly should disruption occur involving either of the two largest plans.

Sufficient capacity for AHCCCS beneficiaries is vital to the program's success especially after the passage of Medicaid Restoration and Expansion. AHCCCS maintains that the potential passage of Medicaid Restoration was a factor in the construction of the RFP, however the extent of the actual overall enrollment increases due to Medicaid Restoration was not known at the time the plans submitted their responses to the RFP. Enrollment has increased 26% since the passage of Medicaid Restoration and this addition of new lives has tested the uncapped plans. If anything happens such that any other plan is unable to meet its obligations under the contract with AHCCCS or if AHCCCS determines a plan contract should be terminated or subject to any limitations (for

[4] AHCCCS Acute Enrollment, By County By Health Plan, September 1, 2013, p. 34, *available at* http://www.azahcccs.gov/reporting/Downloads/AcuteByHealthPlan/Archive/AcuteEnrollment_FY2013.pdf

[5] AHCCCS Acute Enrollment, By County By Health Plan, December 1, 2014, *available at* http://www.azahcccs.gov/reporting/Downloads/AcuteByHealthPlan/AcuteEnrollment.pdf.

[6] *Id.*

example, due to performance issues or a change of ownership), removing the cap from PHP ensures that there will be enough diversity of plans such that the disruption from any such event will be minimized and the system will have capacity to continue to provide high quality and accessible services to every beneficiary.

(iii) *Competitive Price*

As indicated in the Request, PHP's rates are about 5% less than other plans. This lower price is a benefit to the State and will accrue budget savings without cutting a single service or increasing a single charge to Arizona taxpayers. The savings will contribute to the reduction of Arizona's $1.5 billion budget deficit as enrollment in PHP increases.

State revenue collections continue to fall below forecasts and are now 2.6% below the forecast for the first 5 months of the fiscal year. As a result, the State's revenue forecast is now almost $900 million less over the next two fiscal years than what was originally expected. In addition to the lackluster revenue collections, the recent court decision forcing the State to immediately increase K-12 education funding by more than $600 million over the next two fiscal years creates an untenable budget situation. As long as PHP's enrollment cap remains in effect, the State forgoes General Fund savings that could be realized from PHP's more cost-friendly capitation rates.

(iv) *Irreplaceable Experience*

PHP is an Arizona-based business that has operated as a partner in the AHCCCS program since its inception more than 30 years ago. When AHCCCS was first created, it was the first of its kind and the financial risks and resources required of managed care contractors were largely unknown. The challenges associated with operating in this new managed care environment proved to be substantial to the contractors, but PHP met these challenges head on. Over time, PHP grew into an Arizona healthcare enterprise that became a gold standard for plan effectiveness, particularly as it relates to the care of AHCCCS beneficiaries. PHP was also the first Medicaid plan in America to be accredited by the National Committee for Quality Assurance. Across the board, PHP is the only Arizona-grown, currently-contracted plan with this level and depth of experience and history with the AHCCCS program.

If the enrollment cap continues indefinitely, however, there is risk that it may no longer make business sense to continue to operate this business in this market. Of the current AHCCCS acute care plan contractors, PHP has the longest continuous track record of experience and institutional knowledge with the AHCCCS program, employs hundreds of Arizonans, and has been committed to the well being of AHCCCS enrollees for decades. In addition, as described in the Request, PHP has established a new executive management team, with input from AHCCCS, in order to ensure leadership that is focused on improving and expanding the plan.

Nevertheless, as you know, when a plan operates under an enrollment cap for an extended period of time, the decline in beneficiaries and the lack of new enrollments is detrimental. As noted above, PHP's enrollment has fallen precipitously since AHCCCS applied the cap. Because no other plan shares PHP's history and experience, it would be an immeasurable loss to the competitive environment to have an original AHCCCS plan, such as PHP, cease participation in the market. This is particularly the case if any new entrants struggle with compliance issues or face financial hardships that cause them to reassess participation in AHCCCS. PHP is in a stronger position to assist the agency and its members in that scenario, assuming that it is allowed to operate without a cap.

In sum, allowing beneficiaries to enroll in PHP will materially increase competition in the marketplace in terms of the number of plans and capacity of the system, price, and service. It will also prevent the State from losing an exceptionally long-time partner in serving AHCCCS beneficiaries.

3. **Performance Issues May Increase Risk That Plans Will Not Be Able To Meet Beneficiary Needs Or AHCCCS Standards.**

AHCCCS requested that PHP explain why plan performance issues constitute extraordinary and unforeseen circumstances given the number and diversity of regulatory actions over the years and why PHP associated the listed performance issues as potentially resulting in plans losing their contracts or being subject to other severe sanctions.

As AHCCCS pointed out, there are common regulatory actions and compliance letters or fines to health care plans. Encounter sanctions are the most routine of these and generally occur on a quarterly basis. Compliance with the applicable and ever-changing regulatory standards is complex, and something that all plans struggle with from time to time. Nevertheless, in the specific case of the events following the RFP, collectively there are extraordinary and unforeseen circumstances that demonstrate it is in the best interests of the State to lift the cap on PHP. PHP provides a stable and experienced option that offsets the potential risks associated with noncompliance by other plans that at a minimum affect quality of care and access to services for AHCCCS enrollees, and in the extreme case of plan failure or voluntary departure from the marketplace, mitigates against large scale disruption to the program.

Regarding the performance and contract implementation specifically, it was unforeseeable that nearly every plan would incur fines and have such difficulty in timely meeting the terms set forth in the AHCCCS contract. PHP raises the issue of other plans not as an attack, but only to provide examples of performance risks inherent in executing these contracts that may be quite significant. These include non-compliance or discipline that is related to performance issues such as:

(i) *Process-related Requirements*

AHCCCS has cited or fined plans that failed to comply with process-related requirements. For example, AHCCCS repeatedly cited one plan for failing to meet minimum performance standards and it was unforeseeable that these oversights would be ongoing, despite repeated requests by AHCCCS to resolve the deficiencies. On June 13, 2014, AHCCCS cited a plan for failing to identify its pharmacy network changes as a material change.[7] AHCCCS determined that the change would affect more than 5% of members, resulting in a $150,000 fine.

(ii) *Provider Complaints And Claims Payment Processing*

On September 3, 2014, AHCCCS notified a plan that the plan failed to resolve provider complaints regarding claims payment issues.[8] Specifically, for this one particular plan, the number of claims disputes had more than doubled in less than a year due to incorrect handling.[9] AHCCCS stated that it had significant concerns about the plan's ability to efficiently and accurately process and pay claims, expeditiously resolve issues, reprocess and pay claims appropriately and timely, and work collaboratively with providers to address and resolve issues.[10] In this same letter, AHCCCS also stated that it observed poor customer service and inappropriate interactions by the plan's staff with providers.[11] These are not typical or routine types of concerns that occur during implementation.

Other plans have had difficulties in processing provider claim disputes. For example, on November 10, 2014, AHCCCS cited a plan for failure to accurately process claim disputes.[12] In the same notice to cure, the plan was also cited for failure to submit accurate and complete reports, such as claims disputes, and for failure to respond to provider inquiries and concerns. Notably, AHCCCS stated that the plan failed, on multiple occasions, over the last three months to demonstrate responsiveness to provider inquiries and concerns. As a result, AHCCCS had no choice but to intervene in several instances where an appropriate and timely response on the plan's part would have prevented the need for such intervention.[13] The plan had responded to at least one of the providers, but AHCCCS determined that the response letter did not meet the applicable requirements. In contrast, AHCCCS has not cited PHP for these issues.

(iii) *Staffing Requirements*

Plans have also failed to meet certain staffing requirements established in the RFP. For example, one plan failed to hire a Grievance and Appeals Manager and AHCCCS

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[7] AHCCCS, "Acute Care Health Plan Administrative Actions, " https://www.azahcccs.gov/reporting/oversight/acute.aspx

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

imposed a sanction of $25,000.[14] AHCCCS determined that it was evident from recent significant issues related to managing and adjudicating claim disputes, that the plan does not have a dedicated person with claims knowledge, or appropriate Arizona Medicaid knowledge and skills necessary to manage and adjudicate provider disputes, as required in the AHCCCS contract.[15] Similarly, AHCCCS cited a plan on June 23, 2013 for failing to timely hire a Dental Director/Coordinator. In contrast, AHCCCS has not cited PHP for these issues.

(iv) *Performance Measure Sanctions*

Plans have received performance measure sanctions. As with the quarterly pended encounter data that result in sanctions, performance measure sanctions could also be viewed as somewhat common occurrences. Performance measure sanctions, however, do not affect every plan on a regular basis and these sanctions directly indicate whether a plan is meeting the AHCCCS performance standards under its contract. For example, so far in 2014, PHP has not been subject to any performance measure sanctions, but six other plans have all been subject to sanction due to failure to meet performance standards.[16]

These events portend future risk and disruption to plan members in the event beneficiaries are so underserved by a plan that they seek other alternatives or that AHCCCS must take more stringent actions to obtain compliance. Importantly, this pervasive and broadly-occurring noncompliance could not have been foreseen at the time the contracts were awarded. Lifting the enrollment cap on PHP provides an experienced, stable alternative.

4. **The Increase In Entities Purchasing AHCCCS-Contracted Plans Clearly Creates Extraordinary and Unforeseen Circumstances.**

AHCCCS requested that PHP elaborate on concerns regarding purchases of AHCCCS-contracted plans by entities that were not awarded any contract during the RFP process.

Neither PHP nor any of its affiliated companies provided comments to the AHCCCS Administration during its review of the change of ownership request for University Family Care as a result of the proposed merger with the University of Arizona Health Network ("UAHN") and Banner Health ("Banner"). After conducting significant due diligence, AHCCCS approved the merger on November 12, 2014. Despite its approval of the merger, AHCCCS expressed continued concerns regarding the "public perception of the integrity of the procurement process and potential for unintended consequences that may be experienced in the broader health care system."

[14] *Id.*
[15] *Id.*
[16] *Id.*

PHP has never taken a formal position with respect to the Banner-UAHN merger and thus did not offer comments during the solicitation period or public forum held by the agency. The concerns PHP raises now are not specific to the Banner-UAHN merger nor are they intended in any way to be critical of the AHCCCS review process. Rather, like AHCCCS, PHP also has concerns related to the public perception of the integrity of the regulatory process and the impact to the AHCCCS program itself as a potentially destabilizing trend continues in which new and inexperienced entities, unfamiliar with AHCCCS operations, seek entry into Arizona's Medicaid program outside of the RFP process.

At the time PHP submitted the Request, the Banner purchase of UAHN had just been approved, and the Maricopa Health Plan had issued its own RFP seeking a new administrator to replace UAHN. Since that time, Maricopa Health Plan withdrew its RFP, and yet another entity, Blue Shield of California, has proposed to purchase a different AHCCCS-contracted plan, Care1st Health Plan ("Care1st"). Neither Banner nor Blue Shield of California has previously contracted with AHCCCS or administered an AHCCCS-contracted plan. Moreover, Blue Shield of California was not a participant in the RFP, so AHCCCS has not previously had an opportunity to evaluate its qualifications and capacity for managing an acute care plan.

AHCCCS is a recognized leader, and a national model for managed Medicaid programs. As such, the operational and care delivery requirements placed on AHCCCS contracted plans are much higher compared to those of other state Medicaid agencies. The AHCCCS model is unique. With no prior experience, contract compliance can prove difficult and the learning curve steep. The fact that other plans are and continue to be affected by these changes involving less experienced or unknown entities is an extraordinary and unforeseen circumstance of significant concern that justifies lifting the cap on PHP's enrollment. It is also in the best interest of the State to lift the cap because it preserves PHP's role as a long-time partner with AHCCCS - a partner that has a successful track record for execution and understanding of the AHCCCS program.

(i) *Banner-UAHN Transaction*

As stated above, PHP has no formal position with regard to the Banner-UAHN merger. The impact of the merger on the larger health care system, however, is a concern. UAHN operates in 11 other counties outside of Maricopa County. Banner has no experience operating a Medicaid plan, but through its acquisition will now have responsibility for more than 124,000 lives in Arizona. The transaction has the potential to impact those beneficiaries living in Maricopa County with Maricopa Health Plan's issuance (and subsequent withdrawal) of an RFP seeking a new administrator. Questions clearly remain as to Banner's capabilities to not only manage UAHN, but also its ability to administer the Maricopa Health Plan.

In addition, large scale mergers such as the Banner-UAHN deal create certain risks in the marketplace with system consolidations and yet to be determined impacts on health care

costs and delivery of care models. While there may be notable benefits from hospital consolidations, risk factors include less choice for AHCCCS members and providers, and greater inequities in the marketplace that affect patient care and raise the stakes for all Arizonans.

PHP is not questioning the approval of the Banner-UAHN merger, but rather PHP raises global concerns, shared and articulated by AHCCCS in its November 12, 2014 letter approving the merger, that must be monitored to better evaluate the impact on the AHCCCS program, the integrity of the RFP process and most importantly, the long-term effects on AHCCCS beneficiaries and the broader healthcare system. These concerns are only heightened by the new proposal discussed below, by Blue Shield of California to acquire Care1st.

As an approved transaction, the fact remains that the Banner-UAHN merger is an extraordinary and unforeseen circumstance that did not exist when the Contract Award Letter was issued to PHP. By uncapping PHP, AHCCCS mitigates the risk of disruption to the marketplace by diversifying enrollee options with a time-tested and experienced partner with the AHCCCS program.

(ii) *Blue Shield of California-Care1st Transaction*

This situation has continued to evolve, with the development of yet another proposed change of ownership transaction, in which Blue Shield of California has plans to acquire Care1st. Like Banner, Blue Shield of California has no experience operating an AHCCCS-contracted plan. Unlike Banner, however, Blue Shield of California did not participate at all in the acute care RFP. As a result, this entity is an even greater unknown in terms of its operational capabilities and qualifications.

Furthermore, because Care1st has 73,146 AHCCCS beneficiaries (as of December 1, 2014) enrolled in Maricopa County, this proposed transaction directly affects the same GSA served by PHP. In its December 12, 2014 letter to Care1st, AHCCCS reminded the plan that an enrollment cap may be imposed as part of the due diligence process leading up to the transaction. (This appears similar to the process followed during the diligence on the Banner-UAHN transaction, which also included a cap during consideration of the proposal). Unless AHCCCS lifts the cap from PHP, there is now a situation in which there may be two plans with capped enrollment in Maricopa County, forcing new or other enrollees to choose among only five plans, a substantial reduction. (This effect would be even greater should any of the contracted plans be subject to a cap due to performance issues or noncompliance). With the two largest plans already accounting for 49% of beneficiaries, the heavy reliance on two plans would also be magnified. Similarly, in the event that AHCCCS decides to terminate the contract with Care1st or maintain a cap on that plan for some longer period of time after the transaction concludes, there is even further need for lifting the cap on PHP.

PHP has served Arizona for more than thirty years and been a participant in the AHCCCS program since its inception. The plan has reinvested in technology, recruited a leadership team with a proven track record in Arizona and remains a committed partner with AHCCCS, its providers, community advocates and the beneficiaries it serves. PHP is a locally grown plan that understands Arizona and likewise, is well known by the communities it serves. Uncapping PHP poses no risk to the AHCCCS program or its enrollees. To the contrary, a vibrant and healthy PHP ensures stability in the AHCCCS system and mitigates against compliance shortfalls or other unintended consequences.

Regardless of what happens with either the Banner-UAHN merger or Blue Shield of California's proposed acquisition of Care 1st, or any subsequent transactions unknown at this time, the fact that entities that either did not participate at all in the RFP or win any contract award in the RFP are seeking to obtain AHCCCS contracts by purchasing winning entities is a highly disconcerting trend with untold impacts to the AHCCCS system. Because of the unique and innovative nature of the AHCCCS program, even those with experience in other states may encounter challenges in Arizona. These are also clearly extraordinary and unforeseen circumstances following the acute care RFP process that justify lifting PHP's enrollment cap.

5. **PHP Meets Gaps In Service That Would Otherwise Exist.**

AHCCCS requested that PHP describe the gap that would be mitigated by uncapping enrollment in PHP. As stated in the Request, PHP provides specific services and expertise that are beneficial to the State and AHCCCS beneficiaries.

PHP is distinguishable in several ways, specifically:

(i) *Community Presence*

PHP and its affiliated companies, Tenet Healthcare and Abrazo Health Care, have repeatedly demonstrated an unwavering commitment to serve the AHCCCS community. Both the health plan and Tenet/Abrazo's larger provider network proudly serve a high volume of AHCCCS patients and perform a significant percentage of Medicaid work in this state. The ability to coordinate resources between PHP and this network enables access to quality care in facilities located in some of the most densely populated areas of Maricopa County. Even though Abrazo is a tax paying system, it has never shied away from providing services to Arizona's most vulnerable residents. This includes the provision of essential healthcare services through its facilities, which include Maryvale Hospital. Located in an impoverished part of the city, Maryvale Hospital has been financially supported by Tenet because of the critical role it plays in a community that lacks many quality healthcare options. Almost 90% of the deliveries and 63% of the emergency room visits at Maryvale Hospital involve AHCCCS enrollees. The ability of PHP to work in close coordination with facilities such as Maryvale improves patient outcomes, offers patients quality care options, and helps to reduce costs.

Collectively, this organization of healthcare entities supports the economy of Arizona by employing thousands of people in Arizona and paying millions of dollars in sales, real estate, and personal property taxes to Arizona per year. Similarly, Tenet demonstrated additional commitment to Arizona by announcing plans to acquire a controlling interest in the Carondelet Health System in Tucson, another healthcare safety net system. Tenet's involvement will provide a stabilization plan for those hospitals through capital investment that will result in better access to health care for residents of Tucson. Importantly, the conversion of Carondelet from a tax-exempt system to a tax-paying system will generate millions of dollars in additional tax revenues to the State of Arizona, as well as the affected counties and cities.

(ii) *AHCCCS Quality Metrics For Services To Children*

Almost 70% of PHP enrollees are under the age of 18. In serving this largely pediatric population, PHP meets or exceeds numerous AHCCCS quality metrics related to children, such as

- Children's Access to PCPs, by age: 12-24 months
- Children's Access to PCPs, by age: 25 months – 6 years
- Children's Access to PCPs, by age: 7-11 years
- Children's Access to PCPs, by age: 12-19 years
- Well-Child Visits: 15 months
- Well-Child Visits: 3-6 years
- Adolescent Well-Child Visits: 12-21 years
- Children's Dental Visits: 2-21 years
- EPSDT Participation (Early and Periodic Screening Diagnosis and Treatment)
- EPSDT Dental Participation
- Emergency Department Utilization
- Hepatitis A Vaccine
- Rotavirus Vaccine
- Readmissions within 30 Days of discharge

Meeting these particular quality metrics is not a given for every plan at all times. For example, in AHCCCS's most recent notices regarding quality care metrics, issued in September 2014, AHCCCS imposed monetary sanctions on contracted plans for failure to meet the following quality care metrics related to children:

- Five plans failed to meet the Adolescent Well Care standard
- Four plans failed to meet the Well-Child Visits, 15 months standard
- Two plans failed to meet the Well-Child Visits, 3-6 years standard
- Three plans failed to meet the Annual Dental Visits standard
- Five plans failed to meet the EPSDT Participation standard
- Four plans failed to meet the EPSDT Dental Participation standard

Unlike other plans, PHP was not cited for any deficiency for the same time period.

(iii) *Initiatives Specifically For Pediatric Populations*

In response to its largely pediatric population, PHP has initiated specific strategies targeted to improve outcomes for this population. The Pediatric Case Management Program, for example, is focused on meeting the unique needs of children with medically complex conditions by facilitating an integrated multi-disciplinary approach to meet objectives such as improving health status, enhancing member and caregiver experience through improved quality and access to care, and reducing healthcare costs. Similarly, the Neonatal Intensive Care Unit (NICU) Management Program is a multidisciplinary team effort to reduce the risk of premature births and manage NICU utilization and length of stay through improved specialized care management and adhering to established practice standards.

To our knowledge, no other AHCCCS contractor offers such sophisticated programs dedicated to advancing the health of women and children.

(iv) *Experience And Institutional Knowledge*

To the extent inexperienced or unknown entities purchase AHCCCS-contracted plans, there is a gap in experience and institutional knowledge regarding the AHCCCS program and contract management that could affect member and provider experience once the new owners take over. PHP has been contracting with AHCCCS for more than thirty years and has unparalleled experience in this space. Expanding access to an experienced contractor creates an alternative that would otherwise be diminished if this trend of inexperienced or unknown entities buying AHCCCS-contracted plans continues.

PHP meets a number of gaps, and in particular serves a large population of Arizona's children in conformity with applicable performance quality metrics. These qualities clearly support the position that it is in the best interest of the State to lift the enrollment cap in order to gain the full benefit of contracting with PHP.

6. **PHP Medicare Advantage Improvement Measures Will Ensure Improved Services**

AHCCCS requested information from PHP regarding a recent civil monetary penalty ("CMP") that PHP paid to the Centers for Medicare and Medicaid Services ("CMS") related to PHP's Medicare Advantage plans and related plan improvements. Although this incident is not a basis for denying the Request and does not involve the acute care contract awarded in response to the RFP, we welcome this opportunity to provide you with more detail regarding our Medicare Advantage plans, this incident, and to describe the actions already implemented in response.

(i) *PHP Medicare Advantage Plans*

PHP has been a proud and committed partner in offering patient-centered care and expanding services to meet the demands of growing AHCCCS and Medicare populations. In 2003, Congress enacted the Medicare Prescription Drug, Improvement and Modernization Act, adding prescription drug coverage for millions of Medicare beneficiaries, as well as creating the Special Needs Plan designation, allowing plans to specialize in caring for special populations such as dual eligible individuals. Shortly thereafter, PHP entered into a contract to begin offering beneficiaries Medicare Advantage plans, including prescription drug coverage.

On January 1, 2006, Abrazo Advantage Health Plan (later rebranded as Phoenix Health Plans) was launched as a Dual Eligible Special Needs Plan ("D-SNP") serving Medicare and AHCCCS-eligible members. Today, PHP offers three Medicare Advantage plans, one of which is a D-SNP. The other two plans are tiered Medicare Advantage options. Collectively, the plans provide coverage to approximately 12,990 individuals within the state of Arizona.

The particular CMS action did not single out violations of any specific PHP plan. Rather, the action focused primarily on PHP's Part D prescription drug operations, offered by all of PHP's Medicare Advantage plans. Because of this, PHP has had the opportunity to implement changes across all of its Medicare Advantage plans.

(ii) *PHP D-SNP Plan And AHCCCS Policy*

Effective April 1, 2012, in accordance with federal regulations, AHCCCS implemented a formal policy that required all plans operating D-SNPs to enter into an agreement with AHCCCS by January 1, 2013. Each agreement was required to outline the specific dual eligible population the D-SNPs were to serve as well as care coordination and cost sharing obligations.[17] In order to further coordinate care among dual eligible members, AHCCCS required all awardees of the RFP to operate a D-SNP by January 1, 2014 in all counties in which they were awarded a contract. It is now the policy of AHCCCS to no longer contract with any D-SNPs operating in counties in which they do not *also* have an acute care AHCCCS contract.

PHP's Medicare Advantage plans have been available to dual eligible members in Arizona since long before AHCCCS instituted this new policy. In fact, PHP has offered a D-SNP to dual eligible members in every county in which we have been an AHCCCS contractor since the inception of the Medicare SNP program. PHP recognized

[17] *See* AHCCCS Contracting with Medicare Special Needs Plans, Original Policy, *available at*: http://www.azahcccs.gov/reporting/Downloads/Integration/Duals_ACOM107Contracting_MedicareSpecialNeedsPlans.pdf. *See also*, AHCCCS Contractor Operations Manual, Ch. 107 Contracting with Medicare Dual Special Needs Plans, *available at*: http://www.azahcccs.gov/shared/Downloads/ACOM/PolicyFiles/100/107Contracting_MedicareSpecialNeedsPlans.pdf.

AHCCCS's interest in advocating that Congress authorize the D-SNP model to advance the goal (a core value of AHCCCS) of improving dual eligible integration. Thus, before any formal policy was established requiring contractors to offer D-SNPs in awarded counties, PHP understood that by doing so, it could better serve its members and participating providers by streamlining and coordinating care.

Since the inception of the SNP program, PHP has participated fully in the integration of care for dual eligible members by offering a D-SNP in addition to our AHCCCS Acute plan. We have improved access to care for these most at risk beneficiaries by: (i) providing coordination of Medicare and Medicaid benefits, (ii) providing unified operations support, (iii) establishing a single point of contact to navigate both systems, and (iv) leveraging our understanding of the risk factors and challenges facing Medicaid beneficiaries. In essence, we have developed effective models of care to administer benefits to this population.

Please note, that in addition to the CMS audit of Part C and D operations, which resulted in the assessment of a CMP by CMS, CMS also conducted a detailed audit of our Dual Eligible SNP Model of Care, the part of our operations that is most specifically tailored to the AHCCCS population. The findings of that audit were consistent with those found across the industry, and PHP developed and submitted corrective action plans that were accepted by CMS. No CMP or any other sanction resulted from the dual eligible-specific portion of the audit.

(iii) *Medicare Advantage Prescription Drug Plan*

In 2013 and 2014, CMS conducted multiple reviews of Medicare Advantage plans across the country. For a large number of health plans, the CMS reviews resulted in the imposition of CMPs, marketing restrictions, and even enrollment suspensions for their Medicare Advantage plans. PHP's Medicare Advantage Prescription Drug Plan was one of the many plans that received CMPs. However, this does not prevent AHCCCS from lifting the PHP enrollment cap. As established in the RFP and the Contract Award Letter, the conditions for lifting the cap are very specific and do not relate to Medicare Advantage plans.

Other currently contracted plans are also among the many companies affected by CMS's reviews and audits. One of these plans was subject to even more significant CMS penalties due to issues involving its Medicare Advantage plans, yet that plan currently serves AHCCCS beneficiaries with no restrictions. For example, the largest CMP ever imposed by CMS against a Medicare Part C or Part D Plan Sponsor was levied in 2012 for a total of $2,175,000 against the owner of an AHCCCS contract awardee. According to CMS, the sanctions imposed in that case reflected "significant violations of Part D requirements" that resulted in "a significant number of beneficiaries not receiving prescribed drugs . . . in accordance with their benefit plan."

Regarding PHP's prescription drug plan, CMS identified deficiencies, all of which were promptly addressed. In addition to paying the fine, PHP put in place measures that exceeded the CMS requirements, and the matter has been resolved to CMS's satisfaction. These improvements include:

- Changes in staffing, including a new Compliance Officer, new Director of Compliance Operations, new Pharmacy Director, new Manager of Part D Operations, and expansion of the compliance and pharmacy departments.

- Institution of a comprehensive Medicare Training Program that is required of all appropriate employees and covers all aspects of PHP's Medicare Part C and D programs.

- Establishment of a new, electronic system to streamline and manage Medicare Part D operations, that has already been shown to reduce errors and increase program efficiency.

- Institution of enhanced PBM oversight processes, made possible by the staffing changes mentioned above, and corrected claims processing procedures at the pharmacy point of sale. In addition, PHP has selected and implemented a new PBM effective 1/1/2015 placing careful emphasis and management focus on correct application of all applicable coverage and regulatory requirements.

As detailed above, PHP has invested significant resources to improve the operation of its Medicare Advantage plans. The CMS action should not preclude AHCCCS from lifting the enrollment cap, as the RFP and Award Letter both set forth specific conditions under which the cap may be raised. Nevertheless, PHP welcomes the opportunity to explain the actions that have been taken to promptly and effectively resolve this matter. PHP is confident that the improvements detailed above continue to demonstrate an unwavering commitment to providing its members with high quality service and care.

7. **PHP Medicare Advantage Star Ratings Identify Areas For Future Growth.**

AHCCCS's letter requests information about PHP's overall star rating and PHP's activities to improve that rating. With a plan that offers both Part C and Part D benefits, CMS scores the Part C performance and the Part D performance and then assigns an overall Star Rating by taking a weighted average of each of the Part C and D unique measurements. PHP's overall star rating was 2.5. It is important to be aware of the context of the star rating program, the fact that CMS star ratings, as far as we are aware, have never been a factor in evaluating or awarding contracts in response to AHCCCS RFPs, and that neither the RFP nor the Contract Award Letter provide any basis for taking star ratings into account when evaluating whether to lift the enrollment cap on the acute care plan. In addition, there are important distinctions worth noting between the plans subject to star rating and the plans that are not.

(i) *Star Ratings*

As you know, CMS reevaluates and changes plan star ratings on an annual basis. The star ratings program assists the general public and others compare and evaluate different federally-contracted health plans. CMS's process for assigning star ratings involves the collection of data for up to 47 unique measurements in nine different domains and is reflective of a two year lag in data .[18] The process for converting these unique scores into an overall star rating is rather complex, and changes are made to the process each year.[19]

In each case, however, CMS's star rating system is based on data collected as part of a Medicare Advantage Plan's quality improvement program, not on all plans operated by a contractor.[20] Furthermore, the stated purpose of the rating system is only to rate the quality of the Medicare Advantage Plan from which these data are collected.[21] So conclusions made by CMS about a Medicare Advantage Plan based on measurements of that plan should not be imputed to any other commonly-owned or controlled plan. To be clear, the star ratings of a plan only reflect that exact plan and no other.

(ii) *PHP's Star Rating Is Consistent With Ratings Assigned To Other AHCCCS-Contracted Plans*

In large part because CMS frequently changes the mechanics and factors of developing star ratings, all plans experience fluctuations in the ratings on an annual basis. As shown on the table below, for years 2014 and 2015, all of the AHCCCS acute care contractors' Medicare Advantage Plan star ratings ranged from 2.5 to 3.5. Note that because of the two-year lag in CMS evaluation of the data, Health Net's 3.5 rating is based on the periods pre-dating its AHCCCS contract award. As a result, these ratings do not reflect dual eligible population demographic risk factors. These factors are known to influence star ratings.

[18] Medicare 2015 Part C & D Star Rating Technical Notes, pp. 3-4, *available at* http://www.cms.gov/Medicare/Prescription-Drug-Coverage/PrescriptionDrugCovGenIn/PerformanceData.html.
[19] *See id.* at pp. 1-2 (outlining the differences between the 2014 and 2015 star ratings).
[20] *See* 42 U.S.C. § 1395w-22(o)(4)(A).
[21] *Id.*

2014-2015 Star Ratings Of AHCCCS Contractor Non-Acute Care Plans[22]
Excluding plans that are too new to be measured

Plan - Contract #	Star Rating	Year
Care1st - H5430	2.5	2014
Care1st - H5430	3	2015
Health Choice - H5587	2.5	2014
Health Choice - H5587	3	2015
Health Net - H0351	3.5	2014
Health Net - H0351	3.5	2015
Mercy Care - H5580	3	2014
Mercy Care - H5580	3	2015
PHP - H5985	3.0	2014
PHP - H5985	2.5	2015
United - H0321	3	2014
United - H0321	3	2015

If AHCCCS maintains that the star rating for a contractor's Medicare Advantage plan is relevant in evaluating the strength of the contractor's acute care plan, this point is not spelled out in the RFP or Contract Award Letter, and it does not appear that AHCCCS has historically relied on a star rating to make contracting decisions. As shown above, multiple AHCCCS contractors operate a Medicare Advantage Plan that has been awarded a 2.5 star rating in recent years. It would be inconsistent for AHCCCS to base a decision not to lift the cap on PHP's acute care plan contract on a 2.5 star rating for a Medicare Advantage Plan after AHCCCS awarded uncapped contracts to other entities with Medicare Advantage Plans that also recently received 2.5 star ratings, including plans that had a 2.5 Medicare Advantage plan star rating at the time of the acute care contract award.

(iii) *Improving Star Ratings*

Even in light of the fact that the star ratings do not directly measure Arizona acute care plan performance, PHP certainly understands and appreciates the importance of improving care coordination for AHCCCS dual eligible members and that its D-SNP Medicare Advantage Plan is key to achieving this goal. But with the majority of the PHP acute care plan's membership being under the age of 21, there are important distinctions between the key initiatives of the acute care plan and the Medicare Advantage plan, as well as the populations served. Features and characteristics of the acute care plan - such

[22] *See generally* CMS Part C and D Performance Data, *available at* http://www.cms.gov/Medicare/Prescription-Drug-Coverage/PrescriptionDrugCovGenIn/PerformanceData.html.

as the programs specifically for the pediatric population - would not be applicable to the majority of the Medicare Advantage population.

PHP is fully committed to improving its performance and increasing the star rating of its Medicare Advantage Plan. PHP has taken steps in several areas to improve its overall Medicare Advantage Plan star rating for the following year. Specifically:

- In October of 2014, PHP implemented a Transition of Care program in which all members identified at the time of admission as high risk are visited on site in the hospital by PHP staff who work to ensure a seamless transition post discharge. PHP staff members also address their major concerns, which may have contributed to the IP admission. We consider this program to be an example of a "best practice" because it begins upon admission. It targets improvement in a broad set of star measures including all cause readmissions (C22), medication adherence (D11, D12, D13), diabetes treatment (D10), and many other quality driven measures.

- PHP is in the final stages of implementation of an innovative pharmacy program to improve medication adherence and to close gaps in care for Medicare, AHCCCS, and dual eligible members. To our knowledge, we are the only AHCCCS plan to have deployed such a software product. This also enables us to design and implement pharmacy pay for performance incentives at the individual retail pharmacy level to reward high performing pharmacies. We anticipate that this will significantly improve our Part D star measures around medication adherence (D11, D12, D13), drug plan ratings (D05, D06), high risk medication (D09) and diabetes treatment (D10).

- PHP is developing targeted chronic disease management programs, working to reduce readmission rates (C22), and moving to a new claims platform to increase transparency and analytics capabilities. These steps will improve provider engagement and are targeted to improve a full range of quality-based star measures, as well as harder-to-impact CAHPS survey-based measures such as C04, D06, D07, C23, C24, C25, C26, C27, C28.

- PHP is: (i) increasing member enrollment in care management programs, and (ii) aligning with walk-in clinics where members can receive needed services to influence key measures. These steps will improve member engagement and should influence multiple star rating measurements across several domains.

- PHP is utilizing vendor relationships to increase in-home assessments where appropriate, and help monitor and improve drug therapy adherence. In addition, PHP will be transitioning its PBM functions to CVS/Caremark beginning 2015, which enables us to leverage enhanced reporting capabilities. These steps are designed to improve PHP's Part D star ratings performance related to medication

adherence (D11, D12, D13), drug plan ratings (D05, D06), and high risk medication (D09).

- PHP is making targeted investments, deploying tools to track interim clinical and nonclinical metrics, and holding regular cross-functional work group meetings to identify areas needing focus and investment and to track improvement initiatives to completion. Specifically:

  (i) The Stars Improvement Work Group is a cross functional team comprising all departments and disciplines in the health plan, and is co-chaired by the plan CMO and Director of Medicare Operations.

  (ii) The Part D Patient Safety group is attended by representatives from Case Management, Quality Management, Medical Directors, Pharmacy, Medicare and Member Operations. It covers Part D star measures in addition to opioid overutilization, access to medication, etc.

- PHP recently implemented a new medical management IT platform designated the Medical Management Outcome Tracking System that supports and maintains evidence-based care plans, health risk assessments, gaps in care, and other reporting capabilities, which will enhance our ability to drive improvement in all quality based star measures.

- PHP has implemented several payment reform initiatives with providers to improve outcomes related to readmissions and other quality measures. As PHP expands its involvement in innovative payment models with providers of all types, it will continue to use its enhanced data tracking and reporting capabilities to achieve alignment of incentives with providers to drive improvements in star measures and other measures of quality.

Together, these efforts are designed to drive improvements in star rating measurements across all domains, including plan operations.

II. CONCLUSION

As indicated in the Request and amplified above, it is in the best interests of the State to lift the cap on PHP enrollment due to extraordinary and unforeseen circumstances including (i) the trend of purchasing AHCCCS-contracted plans by parties that either lack experience, did not perform well in the RFP, and/or did not participate at all in the RFP; (ii) performance issues with contracted plans that, if continued or exacerbated, may result in plans choosing to leave the Arizona marketplace, contract termination, or other enforcement actions by AHCCCS; and (iii) an increasing state budget shortfall that can be abated without cutting a single service or increasing a single charge to Arizona taxpayers by simply allowing PHP to increase its enrollment.

Phoenix Health Plan

tenet HEALTH

For over thirty years, PHP has been a valued partner in the AHCCCS program. The results of the recent RFP process caused PHP and its affiliated companies to make necessary strategic decisions to address performance issues. These efforts were undertaken in a straight forward, open, and collaborative manner with AHCCCS.

During the last 15 months, PHP and Tenet leadership have recommitted substantial financial resources, reinvested in technology, and assembled a highly talented and experienced group of professionals to lead the next generation of Arizona's longest-standing health plan. Moreover, PHP has adhered to the RFP process and followed the legal and regulatory framework for seeking a cap lift.

Arizona's healthcare marketplace has changed dramatically since the time of the RFP award and continues to evolve in unexpected and groundbreaking ways. These unforeseen and exceptional circumstances most certainly justify lifting PHP's enrollment cap. PHP's track record, implementation of plan improvements, and unwavering commitment to Arizona demonstrate the value and stability it provides to the Medicaid program.

Given the multiple and compelling reasons outlined in our November Request and this letter coupled with PHP's long-standing partnership with AHCCCS, the significant benefits to the State and AHCCCS enrollees, and the unforeseen and exceptional events in Arizona's marketplace, we respectfully request that you lift our enrollment cap and allow us the ability to once again serve Arizona proudly and without restriction. Thank you for providing us the opportunity to offer additional detail and clarification regarding the Request. Should you require further information, we stand ready to respond.

Sincerely,

Reginald M. Ballantyne III, FACHE
Senior Strategic Advisor
Tenet Healthcare

Matt Cowley
Chief Executive Officer
Phoenix Health Plan

cc: Michael Veit, Contracts and Purchasing Administrator, AHCCCS