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ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

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Date: June 14, 2010

To: Interested Parties

From: AHCCCS Administration

Re: DSH, GME and IME Funding Opportunities: Provider Related Donations

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On May 7, 2010, AHCCCS informed the Arizona Hospital Association and County Supervisors Association about potential opportunities for members of their associations to work together to fund Disproportionate Share Hospital (DSH), Graduate Medical Education (GME) and Indirect Medical Education (IME) programs. On June 4, 2010, AHCCCS invited all hospitals and counties to further discuss these opportunities and requested that interested parties inform AHCCCS of their partnership arrangements no later than June 16, 2010. AHCCCS is providing the following additional information regarding local funding of DSH, GME and IME, specifically as it relates to limitations on provider related donations.

**Provider Related Donations:**

As part of any intergovernmental agreement between AHCCCS and a political subdivision, tribal government, or State university, AHCCCS will require the local funding source to attest that the funds transferred to AHCCCS are not derived in whole or in part from provider related donations except to the extent permitted by federal law. In addition to the attestation, the intergovernmental agreement will require the local funding source to reimburse the federal government (through AHCCCS) for the federal share of any payments made by AHCCCS that do not comply with federal requirements pertaining to provider-related donations.

Attached to this document is the complete text of the two most relevant provisions of the federal regulations regarding provider related donations. The first, 42 CFR 433.52, sets forth several definitions. The second, 42 CFR 433.54, states the conditions under which a provider related donation is considered to be bona fide.

In general terms, federal financial participation is not allowed for any Medicaid payment to a hospital (including DSH, GME, or IME payments) that is directly or indirectly related to a provider-related donation unless that donation is a bona fide donation as defined in those federal regulations.

Applying those regulations to the present opportunity for other public entities to fund DSH, GME, and IME, leads to the following general points:

- Any voluntary payment to a local funding source made by hospitals (or entities related to hospitals) is subject to the limitations on provider related donations.

- Payments to local funding sources made by hospitals (or entities related to hospitals) through a third party are subject to the limitation if the third party receives 25% or more of its revenues from hospitals (or entities related to hospitals).
- DSH, GME, or IME payments are not eligible for federal matching funds if the local funding source provides for any payment, offset, or waiver that guarantees to return to hospitals any portion of the hospitals' payments to the local funding source.
- DSH, GME, or IME payments are not eligible for federal matching funds if the amount of the DSH, GME, or IME payments made to hospitals varies only on the amount of the voluntary payments made by hospitals to the local funding source.
- Voluntary payments of less than \$5,000 per year, made by hospitals to local funding sources, are eligible for federal matching funds.
- Voluntary payments of less than \$50,000 per year, made by health care organizational entities are eligible for federal matching funds.

This information is not intended to be a comprehensive statement of the legal restrictions on provider related donations. It is provided to assist local funding agencies and hospitals to ensure compliance with federal requirements. ***Local funding agencies and participating hospitals are advised to consult legal counsel for definitive legal advice.***

While AHCCCS cannot provide legal advice to local funding agencies or hospitals, questions may be directed to Matt Devlin, Assistant Director of the Office of Administrative Legal Services, at (602) 417-4232.

### **Federal Regulations:**

#### **42 C.F.R. § 433.52 General definitions.**

As used in this subpart--

Entity related to a health care provider means--

- (1) An organization, association, corporation, or partnership formed by or on behalf of a health care provider;
- (2) An individual with an ownership or control interest in the provider, as defined in section 1124(a)(3) of the Act;
- (3) An employee, spouse, parent, child, or sibling of the provider, or of a person with an ownership or control interest in the provider, as defined in section 1124(a)(3) of the Act; or
- (4) A supplier of health care items or services or a supplier to providers of health care items or services.

Health care provider means the individual or entity that receives any payment or payments for health care items or services provided.

Provider-related donation means a donation or other voluntary payment (in cash or in kind) made directly or indirectly to a State or unit of local government by or on behalf of a health care provider, an entity related to such a health care provider, or an entity providing goods or services to the State for administration of the State's Medicaid plan.

(1) Donations made by a health care provider to an organization, which in turn donates money to the State, may be considered to be a donation made indirectly to the State by a health care provider.

(2) When an organization receives less than 25 percent of its revenues from providers and/or provider-related entities, its donations will not generally be presumed to be provider-related donations. Under these circumstances, a provider-related donation to an organization will not be considered a donation made indirectly to the State. However, if the donations from providers to an organization are subsequently determined to be indirect donations to the State or unit of local government for administration of the State's Medicaid program, then such donations will be considered to be health care related.

(3) When the organization receives more than 25 percent of its revenue from donations from providers or provider-related entities, the organization always will be considered as acting on behalf of health care providers if it makes a donation to the State. The amount of the organization's donation to the State, in a State fiscal year, that will be considered health care related, will be based on the percentage of donations the organization received from the providers during that period.

#### **42 C.F.R. § 433.54 Bona fide donations.**

(a) A bona fide donation means a provider-related donation, as defined in § 433.52, made to the State or unit of local government, that has no direct or indirect relationship, as described in paragraph (b) of this section, to Medicaid payments made to--

- (1) The health care provider;
- (2) Any related entity providing health care items and services; or
- (3) Other providers furnishing the same class of items or services as the provider or entity.

(b) Provider-related donations will be determined to have no direct or indirect relationship to Medicaid payments if those donations are not returned to the individual provider, the provider class, or related entity under a hold harmless provision or practice, as described in paragraph (c) of this section.

(c) A hold harmless practice exists if any of the following applies:

- (1) The amount of the payment received (other than under title XIX of the Act) is positively correlated either to the amount of the donation or to the difference between the amount of the donation and the amount of the payment received under the State plan;

(2) All or any portion of the payment made under Medicaid to the donor, the provider class, or any related entity, varies based only on the amount of the total donation received; or

(3) The State or other unit of local government receiving the donation provides for any payment, offset, or waiver that guarantees to return any portion of the donation to the provider.

(d) CMS will presume provider-related donations to be bona fide if the voluntary payments, including, but not limited to, gifts, contributions, presentations or awards, made by or on behalf of individual health care providers to the State, county, or any other unit of local government does not exceed--

(1) \$ 5,000 per year in the case of an individual provider donation; or

(2) \$ 50,000 per year in the case of a donation from any health care organizational entity.

(e) To the extent that a donation presumed to be bona fide contains a hold harmless provision, as described in paragraph (c) of this section, it will not be considered a bona fide donation. When provider-related donations are not bona fide, CMS will deduct this amount from the State's medical assistance expenditures before calculating FFP. This offset will apply to all years the State received such donations and any subsequent fiscal year in which a similar donation is received.