

State of Arizona
Senate
Fifty-third Legislature
First Regular Session
2017

SENATE BILL 1527

AN ACT

AMENDING TITLE 36, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-122; AMENDING TITLE 36, CHAPTER 1, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-145; AMENDING SECTIONS 36-2903.11, 36-2907, 36-2930.03, 36-2953, 36-2985 AND 36-2986, ARIZONA REVISED STATUTES; AMENDING LAWS 2013, FIRST SPECIAL SESSION, CHAPTER 10, SECTION 15; APPROPRIATING MONIES; RELATING TO HEALTH BUDGET RECONCILIATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 36, chapter 1, article 1, Arizona Revised
3 Statutes, is amended by adding section 36-122, to read:

4 36-122. Public health emergencies fund; exemption; report

5 A. THE PUBLIC HEALTH EMERGENCIES FUND IS ESTABLISHED CONSISTING OF
6 LEGISLATIVE APPROPRIATIONS. THE DIRECTOR SHALL ADMINISTER THE FUND.
7 MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED AND MAY BE SPENT FOR
8 PUBLIC HEALTH EMERGENCY RESPONSES OF THIS STATE FOLLOWING A STATE OF
9 EMERGENCY DECLARATION BY THE GOVERNOR. MONIES IN THE FUND ARE EXEMPT FROM
10 THE PROVISIONS OF SECTION 35-190 RELATING TO THE LAPSING OF
11 APPROPRIATIONS.

12 B. ON OR BEFORE SEPTEMBER 1 OF EACH YEAR, THE DEPARTMENT SHALL
13 REPORT ANY EXPENDITURES FROM THE FUND TO THE JOINT LEGISLATIVE BUDGET
14 COMMITTEE.

15 Sec. 2. Title 36, chapter 1, article 2, Arizona Revised Statutes,
16 is amended by adding section 36-145, to read:

17 36-145. Family planning services; grant application;
18 distribution of monies

19 A. ON AN ANNUAL OR OTHERWISE APPLICABLE BASIS, THE DEPARTMENT OF
20 HEALTH SERVICES SHALL SUBMIT A GRANT APPLICATION UNDER TITLE X OF THE
21 PUBLIC HEALTH SERVICE ACT (42 UNITED STATES CODE SECTIONS 300 THROUGH
22 300a-8) TO THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR
23 MONIES TO PROVIDE FAMILY PLANNING SERVICES. THE DEPARTMENT OF HEALTH
24 SERVICES SHALL EMPHASIZE IN THE APPLICATION THAT THE STATE IS BEST SUITED
25 TO RECEIVE AND DISTRIBUTE THESE FAMILY PLANNING SERVICES MONIES FOR THIS
26 STATE.

27 B. THE DEPARTMENT OF HEALTH SERVICES SHALL DISTRIBUTE ANY MONIES
28 RECEIVED FROM A GRANT APPLICATION MADE PURSUANT TO SUBSECTION A OF THIS
29 SECTION CONSISTENT WITH SECTION 35-196.05, SUBSECTION A.

30 Sec. 3. Section 36-2903.11, Arizona Revised Statutes, is amended to
31 read:

32 36-2903.11. AHCCCS contractors; emergency department use;
33 annual reporting

34 A. A contractor shall intervene if a member inappropriately seeks
35 care at a hospital emergency department four times or more in a six-month
36 period to educate the member regarding the proper use of emergency
37 services.

38 B. ~~Contractors~~ A CONTRACTOR shall report to the administration in a
39 manner prescribed by the administration the number of times the contractor
40 intervenes with members pursuant to this section.

41 C. ON OR BEFORE DECEMBER 1, 2017 AND ON OR BEFORE DECEMBER 1 OF
42 EACH YEAR THEREAFTER, THE ADMINISTRATION SHALL REPORT TO THE DIRECTORS OF
43 THE JOINT LEGISLATIVE BUDGET COMMITTEE AND THE GOVERNOR'S OFFICE OF
44 STRATEGIC PLANNING AND BUDGETING ON THE USE OF EMERGENCY DEPARTMENTS FOR
45 NONEMERGENCY PURPOSES BY MEMBERS.

1 Sec. 4. Section 36-2907, Arizona Revised Statutes, is amended to
2 read:

3 36-2907. Covered health and medical services; modifications;
4 related delivery of service requirements;
5 definition

6 A. Subject to the limitations and exclusions specified in this
7 section, contractors shall provide the following medically necessary
8 health and medical services:

9 1. Inpatient hospital services that are ordinarily furnished by a
10 hospital for the care and treatment of inpatients and that are provided
11 under the direction of a physician or a primary care practitioner. For
12 the purposes of this section, inpatient hospital services exclude services
13 in an institution for tuberculosis or mental diseases unless authorized
14 under an approved section 1115 waiver.

15 2. Outpatient health services that are ordinarily provided in
16 hospitals, clinics, offices and other health care facilities by licensed
17 health care providers. Outpatient health services include services
18 provided by or under the direction of a physician or a primary care
19 practitioner, **INCLUDING OCCUPATIONAL THERAPY.**

20 3. Other laboratory and x-ray services ordered by a physician or a
21 primary care practitioner.

22 4. Medications that are ordered on prescription by a physician or a
23 dentist licensed pursuant to title 32, chapter 11. Persons who are dually
24 eligible for title XVIII and title XIX services must obtain available
25 medications through a medicare licensed or certified medicare advantage
26 prescription drug plan, a medicare prescription drug plan or any other
27 entity authorized by medicare to provide a medicare part D prescription
28 drug benefit.

29 5. Medical supplies, durable medical equipment, insulin pumps and
30 prosthetic devices ordered by a physician or a primary care practitioner.
31 Suppliers of durable medical equipment shall provide the administration
32 with complete information about the identity of each person who has an
33 ownership or controlling interest in their business and shall comply with
34 federal bonding requirements in a manner prescribed by the administration.

35 6. For persons who are at least twenty-one years of age, treatment
36 of medical conditions of the eye, excluding eye examinations for
37 prescriptive lenses and the provision of prescriptive lenses.

38 7. Early and periodic health screening and diagnostic services as
39 required by section 1905(r) of title XIX of the social security act for
40 members who are under twenty-one years of age.

41 8. Family planning services that do not include abortion or
42 abortion counseling. If a contractor elects not to provide family
43 planning services, this election does not disqualify the contractor from
44 delivering all other covered health and medical services under this
45 chapter. In that event, the administration may contract directly with

1 another contractor, including an outpatient surgical center or a
2 noncontracting provider, to deliver family planning services to a member
3 who is enrolled with the contractor that elects not to provide family
4 planning services.

5 9. Podiatry services that are performed by a podiatrist who is
6 licensed pursuant to title 32, chapter 7 and ordered by a primary care
7 physician or primary care practitioner.

8 10. Nonexperimental transplants approved for title XIX
9 reimbursement.

10 11. FOR PERSONS WHO ARE AT LEAST TWENTY-ONE YEARS OF AGE, EMERGENCY
11 DENTAL CARE AND EXTRACTIONS IN AN ANNUAL AMOUNT OF NOT MORE THAN ONE
12 THOUSAND DOLLARS PER MEMBER.

13 ~~11.~~ 12. Ambulance and nonambulance transportation, except as
14 provided in subsection G of this section.

15 ~~12.~~ 13. Hospice care.

16 ~~13.~~ 14. Orthotics, if all of the following apply:

17 (a) The use of the orthotic is medically necessary as the preferred
18 treatment option consistent with medicare guidelines.

19 (b) The orthotic is less expensive than all other treatment options
20 or surgical procedures to treat the same diagnosed condition.

21 (c) The orthotic is ordered by a physician or primary care
22 practitioner.

23 B. The limitations and exclusions for health and medical services
24 provided under this section are as follows:

25 1. Circumcision of newborn males is not a covered health and
26 medical service.

27 2. For eligible persons who are at least twenty-one years of age:

28 (a) Outpatient health services do not include ~~occupational therapy~~
29 ~~or~~ speech therapy.

30 (b) Prosthetic devices do not include hearing aids, dentures,
31 bone-anchored hearing aids or cochlear implants. Prosthetic devices,
32 except prosthetic implants, may be limited to twelve thousand five hundred
33 dollars per contract year.

34 (c) Percussive vests are not covered health and medical services.

35 (d) Durable medical equipment is limited to items covered by
36 medicare.

37 (e) Nonexperimental transplants do not include pancreas-only
38 transplants.

39 (f) Bariatric surgery procedures, including laparoscopic and open
40 gastric bypass and restrictive procedures, are not covered health and
41 medical services.

42 C. The system shall pay noncontracting providers only for health
43 and medical services as prescribed in subsection A of this section and as
44 prescribed by rule.

1 D. The director shall adopt rules necessary to limit, to the extent
2 possible, the scope, duration and amount of services, including maximum
3 limitations for inpatient services that are consistent with federal
4 regulations under title XIX of the social security act (P.L. 89-97; 79
5 Stat. 344; 42 United States Code section 1396 (1980)). To the extent
6 possible and practicable, these rules shall provide for the prior approval
7 of medically necessary services provided pursuant to this chapter.

8 E. The director shall make available home health services in lieu
9 of hospitalization pursuant to contracts awarded under this article. For
10 the purposes of this subsection, "home health services" means the
11 provision of nursing services, home health aide services or medical
12 supplies, equipment and appliances that are provided on a part-time or
13 intermittent basis by a licensed home health agency within a member's
14 residence based on the orders of a physician or a primary care
15 practitioner. Home health agencies shall comply with the federal bonding
16 requirements in a manner prescribed by the administration.

17 F. The director shall adopt rules for the coverage of behavioral
18 health services for persons who are eligible under section 36-2901,
19 paragraph 6, subdivision (a). The administration acting through the
20 regional behavioral health authorities shall establish a diagnostic and
21 evaluation program to which other state agencies shall refer children who
22 are not already enrolled pursuant to this chapter and who may be in need
23 of behavioral health services. In addition to an evaluation, the
24 administration acting through regional behavioral health authorities shall
25 also identify children who may be eligible under section 36-2901,
26 paragraph 6, subdivision (a) or section 36-2931, paragraph 5 and shall
27 refer the children to the appropriate agency responsible for making the
28 final eligibility determination.

29 G. The director shall adopt rules for the provision of
30 transportation services and rules providing for copayment by members for
31 transportation for other than emergency purposes. Subject to approval by
32 the centers for medicare and medicaid services, nonemergency medical
33 transportation shall not be provided except for stretcher vans and
34 ambulance transportation. Prior authorization is required for
35 transportation by stretcher van and for medically necessary ambulance
36 transportation initiated pursuant to a physician's direction. Prior
37 authorization is not required for medically necessary ambulance
38 transportation services rendered to members or eligible persons initiated
39 by dialing telephone number 911 or other designated emergency response
40 systems.

41 H. The director may adopt rules to allow the administration, at the
42 director's discretion, to use a second opinion procedure under which
43 surgery may not be eligible for coverage pursuant to this chapter without
44 documentation as to need by at least two physicians or primary care
45 practitioners.

1 I. If the director does not receive bids within the amounts
2 budgeted or if at any time the amount remaining in the Arizona health care
3 cost containment system fund is insufficient to pay for full contract
4 services for the remainder of the contract term, the administration, on
5 notification to system contractors at least thirty days in advance, may
6 modify the list of services required under subsection A of this section
7 for persons defined as eligible other than those persons defined pursuant
8 to section 36-2901, paragraph 6, subdivision (a). The director may also
9 suspend services or may limit categories of expense for services defined
10 as optional pursuant to title XIX of the social security act (P.L. 89-97;
11 79 Stat. 344; 42 United States Code section 1396 (1980)) for persons
12 defined pursuant to section 36-2901, paragraph 6, subdivision (a). Such
13 reductions or suspensions do not apply to the continuity of care for
14 persons already receiving these services.

15 J. Additional, reduced or modified hospitalization and medical care
16 benefits may be provided under the system to enrolled members who are
17 eligible pursuant to section 36-2901, paragraph 6, subdivision (b), (c),
18 (d) or (e).

19 K. All health and medical services provided under this article
20 shall be provided in the geographic service area of the member, except:

21 1. Emergency services and specialty services provided pursuant to
22 section 36-2908.

23 2. That the director may permit the delivery of health and medical
24 services in other than the geographic service area in this state or in an
25 adjoining state if the director determines that medical practice patterns
26 justify the delivery of services or a net reduction in transportation
27 costs can reasonably be expected. Notwithstanding the definition of
28 physician as prescribed in section 36-2901, if services are procured from
29 a physician or primary care practitioner in an adjoining state, the
30 physician or primary care practitioner shall be licensed to practice in
31 that state pursuant to licensing statutes in that state similar to title
32 32, chapter 13, 15, 17 or 25 and shall complete a provider agreement for
33 this state.

34 L. Covered outpatient services shall be subcontracted by a primary
35 care physician or primary care practitioner to other licensed health care
36 providers to the extent practicable for purposes including, but not
37 limited to, making health care services available to underserved areas,
38 reducing costs of providing medical care and reducing transportation
39 costs.

40 M. The director shall adopt rules that prescribe the coordination
41 of medical care for persons who are eligible for system services. The
42 rules shall include provisions for the transfer of patients, the transfer
43 of medical records and the initiation of medical care.

44 N. For the purposes of this section, "ambulance" has the same
45 meaning prescribed in section 36-2201.

1 Sec. 5. Section 36-2930.03, Arizona Revised Statutes, is amended to
2 read:

3 36-2930.03. 340B drug pricing; requirements; applicability;
4 annual report; definitions

5 A. Beginning the later of January 1, 2017 or on approval by the
6 centers for medicare and medicaid services:

7 1. 340B covered entities shall submit point-of-sale prescription
8 and physician-administered drug claims for members for drugs that are
9 identified in the 340B pricing file, whether or not the drugs are
10 purchased under the 340B drug pricing program. The claims shall include a
11 professional fee and the lesser of either:

12 (a) The actual acquisition cost.

13 (b) The 340B ceiling price.

14 2. The administration or a contractor shall reimburse claims for
15 drugs that are identified in the 340B pricing file and that are dispensed
16 by 340B covered entities or administered by 340B covered entity providers,
17 whether or not the drugs are purchased under the 340B drug pricing
18 program, at the amount submitted pursuant to paragraph 1 of this
19 subsection plus a professional fee as determined by the administration
20 unless a contract between the 340B covered entity and the administration
21 or a contractor specifies a different professional fee.

22 3. The administration and its contractors may not reimburse any
23 contracted pharmacy for drugs dispensed as part of the 340B drug pricing
24 program. The administration and its contractors shall reimburse
25 contracted pharmacies for drugs that are not purchased, dispensed or
26 administered as part of or subject to the 340B drug pricing program. A
27 contracted pharmacy shall be reimbursed at the price and professional fee
28 set forth in the contract between the contracted pharmacy and the
29 administration or its contractors.

30 B. This section does not require the administration or its
31 contractors to reimburse a pharmacy that does not have a contract with the
32 administration or its contractors.

33 C. This section does not apply to licensed hospitals and outpatient
34 facilities that are owned or operated by a licensed hospital.

35 D. On or before November 1, ~~2016~~, the administration shall report
36 to the governor, the president of the senate, the speaker of the house of
37 representatives and the joint legislative budget committee regarding the
38 technological feasibility and costs of applying this section to licensed
39 hospitals and outpatient facilities that are owned or operated by a
40 licensed hospital.

41 E. For the purposes of this section:

42 1. "340B ceiling price" means the maximum price that drug
43 manufacturers may charge covered entities participating in the 340B drug
44 pricing program as reported by the drug manufacturer to the United States
45 department of health and human services. The 340B ceiling price per unit

1 is defined as the average manufacturer price minus the federal unit rebate
2 amount.

3 2. "340B covered entity" means a covered entity as defined by 42
4 United States Code section 256b that participates in the 340B drug pricing
5 program.

6 3. "340B drug pricing program" means the discount drug purchasing
7 program described in 42 United States Code section 256b.

8 4. "Actual acquisition cost" means the purchase price of a drug
9 paid by a pharmacy net of all discounts, rebates, chargebacks and other
10 adjustments to the price of the drug, not including professional fees.

11 5. "Administration" has the same meaning prescribed in section
12 36-2901 and includes the administration's contracted pharmacy benefits
13 manager.

14 6. "Contracted pharmacy" means a separate pharmacy with which a
15 340B covered entity contracts to provide comprehensive pharmacy services
16 using medications that are subject to 340B drug pricing.

17 7. "Contractor" has the same meaning prescribed in section 36-2901
18 and includes a contractor's pharmacy benefits manager.

19 8. "Professional fee" means the amount paid for the professional
20 services provided by the pharmacist for dispensing a prescription.
21 Professional fee does not include any payment for the drug being
22 dispensed.

23 Sec. 6. Section 36-2953, Arizona Revised Statutes, is amended to
24 read:

25 36-2953. Department long-term care system fund; uniform
26 accounting; reporting requirements

27 A. The department shall establish and maintain a department
28 long-term care system fund, which is a separate fund to distinguish its
29 revenues and its expenditures pursuant to this article from other programs
30 funded or administered by the department. Subject to legislative
31 appropriation, the fund shall be used to pay administrative and program
32 costs associated with the operation of the system. The department
33 long-term care system fund shall be divided as follows:

34 1. An account for eligibility determination pursuant to section
35 36-2933, if the administration enters into an interagency agreement with
36 the department pursuant to section 36-2933, subsection E.

37 2. An account for the provision of long-term care services as
38 prescribed in section 36-2939, subsections A and B.

39 B. The department long-term care system fund shall be composed of:

40 1. Monies paid by the administration pursuant to the contract.

41 2. Amounts paid by third-party payors.

42 3. Gifts, donations and grants from any source.

43 4. State appropriations for the department long-term care system
44 pursuant to this article.

45 5. Interest on monies deposited in the long-term care system fund.

1 C. The department shall submit a prospective long-term care budget
2 as prescribed by the administration.

3 D. The administration shall prescribe a uniform accounting system
4 for the fund established pursuant to subsection A of this section.
5 Technical assistance shall be provided by the administration to the
6 department in order to facilitate the implementation of the uniform
7 accounting system.

8 E. The department shall submit an annual audited financial and
9 programmatic report for the preceding fiscal year as required by the
10 administration. The report shall include beginning and ending fund
11 balances, revenues and expenditures, including specific identification of
12 administrative costs for the system. The report shall include the number
13 of members served by the system and the cost incurred for various types of
14 services provided to members in a format prescribed by the director.

15 F. The department shall submit additional utilization and financial
16 reports as required by the director.

17 G. The director shall make at least an annual review of the
18 department's records and accounts.

19 H. All monies from capitated payments in the department long-term
20 care system fund that are unexpended and unencumbered at the end of the
21 fiscal year revert to the state general fund on or before June 30 of the
22 following fiscal year. The transfer amount may be adjusted for reported
23 but unpaid claims and estimated incurred but unreported claims, subject to
24 approval by the administration. **THE TRANSFER AMOUNT MAY NOT BE ADJUSTED
25 TO PAY NONMEDICAID CLAIMS INCURRED BY THE DIVISION OF DEVELOPMENTAL
26 DISABILITIES.**

27 Sec. 7. Section 36-2985, Arizona Revised Statutes, is amended to
28 read:

29 **36-2985. Notice of program suspension; spending limitation**

30 ~~A. If the director determines that monies may be insufficient for
31 the program, the director shall immediately notify the governor, the
32 president of the senate and the speaker of the house of representatives.
33 After consulting with the governor, the administration shall stop
34 processing new applications for the program until the administration is
35 able to verify that funding is sufficient to begin processing applications
36 and the governor agrees that the administration may begin processing
37 applications.~~

38 ~~B. A. If the federal government eliminates federal funding THIS
39 STATE'S FEDERAL MEDICAL ASSISTANCE PERCENTAGE for the program as specified
40 in 42 United States Codes section 1397ee IS LESS THAN ONE HUNDRED PERCENT,
41 the administration shall immediately NOTIFY THE GOVERNOR, THE PRESIDENT OF
42 THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND SHALL
43 IMMEDIATELY stop processing all NEW applications and shall provide at
44 least thirty days' advance notice to contractors and members that the
45 program will terminate.~~

1 ~~B.~~ B. The total amount of state monies that may be spent in any
2 fiscal year by the administration for health care provided under this
3 article shall not exceed the amount appropriated or authorized by section
4 35-173.

5 ~~C.~~ C. This article does not impose a duty on an officer, agent or
6 employee of this state to discharge a responsibility or create any right
7 in a person or group if the discharge or right would require an
8 expenditure of state monies in excess of the expenditure authorized by
9 legislative appropriation for that specific purpose.

10 Sec. 8. Section 36-2986, Arizona Revised Statutes, is amended to
11 read:

12 36-2986. Administration; powers and duties of director

13 A. The director has full operational authority to adopt rules or to
14 use the appropriate rules adopted for article 1 of this chapter to
15 implement this article, including any of the following:

16 1. Contract administration and oversight of contractors.

17 2. Development of a complete system of accounts and controls for
18 the program, including provisions designed to ensure that covered health
19 and medical services provided through the system are not used
20 unnecessarily or unreasonably, including inpatient behavioral health
21 services provided in a hospital.

22 3. Establishment of peer review and utilization review functions
23 for all contractors.

24 4. Development and management of a contractor payment system.

25 5. Establishment and management of a comprehensive system for
26 assuring quality of care.

27 6. Establishment and management of a system to prevent fraud by
28 members, contractors and health care providers.

29 7. Development of an outreach program. The administration shall
30 coordinate with public and private entities to provide outreach services
31 for children under this article. Priority shall be given to those
32 families who are moving off welfare. Outreach activities shall include
33 strategies to inform communities, including tribal communities, about the
34 program, ensure a wide distribution of applications and provide training
35 for other entities to assist with the application process.

36 8. Coordination of benefits provided under this article for any
37 member. The director may require that contractors and noncontracting
38 providers are responsible for the coordination of benefits for services
39 provided under this article. Requirements for coordination of benefits by
40 noncontracting providers under this section are limited to coordination
41 with standard health insurance and disability insurance policies and
42 similar programs for health coverage. The director may require members to
43 assign to the administration rights to all types of medical benefits to
44 which the person is entitled, including first party medical benefits under
45 automobile insurance policies. The state has a right of subrogation

1 against any other person or firm to enforce the assignment of medical
2 benefits. The provisions of this paragraph are controlling over the
3 provisions of any insurance policy that provides benefits to a member if
4 the policy is inconsistent with this paragraph.

5 9. Development and management of an eligibility, enrollment and
6 redetermination system including a process for quality control.

7 10. Establishment and maintenance of an encounter claims system
8 that ensures that ninety ~~per cent~~ PERCENT of the clean claims are paid
9 within thirty days after receipt and ninety-nine ~~per cent~~ PERCENT of the
10 remaining clean claims are paid within ninety days after receipt by the
11 administration or contractor unless an alternative payment schedule is
12 agreed to by the contractor and the provider. For the purposes of this
13 paragraph, "clean claims" has the same meaning prescribed in section
14 36-2904, subsection G.

15 11. Establishment of standards for the coordination of medical care
16 and member transfers.

17 12. Requiring contractors to submit encounter data in a form
18 specified by the director.

19 13. Assessing civil penalties for improper billing as prescribed in
20 section 36-2903.01, subsection K.

21 B. Notwithstanding any other law, if Congress amends title XXI of
22 the social security act and the administration is required to make
23 conforming changes to rules adopted pursuant to this article, the
24 administration shall request a hearing with the joint health committee of
25 reference for review of the proposed rule changes.

26 C. The director may subcontract distinct administrative functions
27 to one or more persons who may be contractors within the system.

28 D. The director shall require as a condition of a contract with any
29 contractor that all records relating to contract compliance are available
30 for inspection by the administration and that these records be maintained
31 by the contractor for five years. The director shall also require that
32 these records are available by a contractor on request of the secretary of
33 the United States department of health and human services.

34 E. Subject to existing law relating to privilege and protection,
35 the director shall prescribe by rule the types of information that are
36 confidential and circumstances under which this information may be used or
37 released, including requirements for physician-patient confidentiality.
38 Notwithstanding any other law, these rules shall be designed to provide
39 for the exchange of necessary information for the purposes of eligibility
40 determination under this article. Notwithstanding any other law, a
41 member's medical record shall be released without the member's consent in
42 situations of suspected cases of fraud or abuse relating to the system to
43 an officer of this state's certified Arizona health care cost containment
44 system fraud control unit who has submitted a written request for the
45 medical record.

1 F. The director shall provide for the transition of members between
2 contractors and noncontracting providers and the transfer of members who
3 have been determined eligible from hospitals that do not have contracts to
4 care for these persons.

5 G. To the extent that services are furnished pursuant to this
6 article, a contractor is not subject to title 20 unless the contractor is
7 a qualifying plan and has elected to provide services pursuant to this
8 article.

9 H. As a condition of a contract, the director shall require
10 contract terms that are necessary to ensure adequate performance by the
11 contractor. Contract provisions required by the director include the
12 maintenance of deposits, performance bonds, financial reserves or other
13 financial security. The director may waive requirements for the posting
14 of bonds or security for contractors who have posted other security, equal
15 to or greater than that required by the administration, with a state
16 agency for the performance of health service contracts if monies would be
17 available from that security for the system on default by the contractor.

18 I. The director shall establish solvency requirements in contract
19 that may include withholding or forfeiture of payments to be made to a
20 contractor by the administration for the failure of the contractor to
21 comply with a provision of the contract with the administration. The
22 director may also require contract terms allowing the administration to
23 operate a contractor directly under circumstances specified in the
24 contract. The administration shall operate the contractor only as long as
25 it is necessary to assure delivery of uninterrupted care to members
26 enrolled with the contractor and to accomplish the orderly transition of
27 members to other contractors or until the contractor reorganizes or
28 otherwise corrects the contract performance failure. The administration
29 shall not operate a contractor unless, before that action, the
30 administration delivers notice to the contractor providing an opportunity
31 for a hearing in accordance with procedures established by the director.
32 Notwithstanding the provisions of a contract, if the administration finds
33 that the public health, safety or welfare requires emergency action, it
34 may operate as the contractor on notice to the contractor and pending an
35 administrative hearing, which it shall promptly institute.

36 J. For the sole purpose of matters concerning and directly related
37 to this article, the administration is exempt from section 41-192.

38 K. The director may withhold payments to a noncontracting provider
39 if the noncontracting provider does not comply with this article or
40 adopted rules that relate to the specific services rendered and billed to
41 the administration.

42 L. The director shall:

43 1. Prescribe uniform forms to be used by all contractors and
44 furnish uniform forms and procedures, including methods of identification
45 of members. The rules shall include requirements that an applicant

1 personally complete or assist in the completion of eligibility application
2 forms, except in situations in which the person has a disability.

3 2. By rule, establish a grievance and appeal procedure that
4 conforms with the process and the time frames specified in article 1 of
5 this chapter. If the program is suspended ~~or terminated~~ pursuant to
6 section 36-2985, an applicant or member is not entitled to contest the
7 denial, suspension or termination of eligibility for the program.

8 3. Apply for and accept federal monies available under title XXI of
9 the social security act. Available state monies appropriated to the
10 administration for the operation of the program shall be used as matching
11 monies to secure federal monies pursuant to this subsection.

12 M. The administration is entitled to all rights provided to the
13 administration for liens and release of claims as specified in sections
14 36-2915 and 36-2916 and shall coordinate benefits pursuant to section
15 36-2903, subsection F and be a payor of last resort for persons who are
16 eligible pursuant to this article.

17 N. The director shall follow the same procedures for review
18 committees, immunity and confidentiality that are prescribed in article 1
19 of this chapter.

20 Sec. 9. Laws 2013, first special session, chapter 10, section 15 is
21 amended to read:

22 Sec. 15. AHCCCS political subdivisions; freestanding
23 children's hospitals; delayed repeal; definition

24 A. The Arizona health care cost containment system administration,
25 subject to the approval of the centers for medicare and medicaid services
26 and pursuant to section 36-2903, subsection B, paragraph 1, Arizona
27 Revised Statutes, may authorize any political subdivision of this state to
28 provide monies necessary to qualify for federal matching monies in order
29 to provide matching monies for uncompensated care payments to freestanding
30 children's hospitals with one hundred beds or more.

31 B. The Arizona health care cost containment system administration
32 shall not increase in a given federal fiscal year the total of the
33 payments made pursuant to this section plus the amount of disproportionate
34 share hospital payments made to the same freestanding children's hospital
35 by more than three ~~per cent~~ PERCENT per year above the total of the
36 payments made to the hospital pursuant to Laws 2011, chapter 234, section
37 2, as amended by ~~this act~~ LAWS 2013, FIRST SPECIAL SESSION, CHAPTER 10,
38 SECTION 14, in federal fiscal year ~~2013~~ 2012-2013 plus the
39 disproportionate share hospital payments in federal fiscal year ~~2013~~
40 2012-2013.

41 ~~D.~~ C. This section is repealed from and after December 31, ~~2017~~
42 2020.

43 ~~E.~~ D. For the purposes of this section, "political subdivision"
44 means a local, county or tribal government, a university under the
45 jurisdiction of the Arizona board of regents and any other governmental

1 entity that is legally qualified to participate in funding program
2 expenditures pursuant to title 36, chapter 29, Arizona Revised Statutes.

3 Sec. 10. ALTCS; county contributions; fiscal year 2017-2018

4 A. Notwithstanding section 11-292, Arizona Revised Statutes, county
5 contributions for the Arizona long-term care system for fiscal year
6 2017-2018 are as follows:

7	1. Apache	\$ 657,500
8	2. Cochise	\$ 5,241,100
9	3. Coconino	\$ 1,974,000
10	4. Gila	\$ 2,208,500
11	5. Graham	\$ 1,561,800
12	6. Greenlee	\$ 28,000
13	7. La Paz	\$ 526,000
14	8. Maricopa	\$165,477,400
15	9. Mohave	\$ 8,350,800
16	10. Navajo	\$ 2,721,500
17	11. Pima	\$ 40,974,000
18	12. Pinal	\$ 15,344,200
19	13. Santa Cruz	\$ 2,040,600
20	14. Yavapai	\$ 8,840,500
21	15. Yuma	\$ 8,727,300

22 B. If the overall cost for the Arizona long-term care system
23 exceeds the amount specified in the general appropriations act for fiscal
24 year 2017-2018, the state treasurer shall collect from the counties the
25 difference between the amount specified in subsection A of this section
26 and the counties' share of the state's actual contribution. The counties'
27 share of the state's contribution shall comply with any federal
28 maintenance of effort requirements. The director of the Arizona health
29 care cost containment system administration shall notify the state
30 treasurer of the counties' share of the state's contribution and report
31 the amount to the director of the joint legislative budget committee. The
32 state treasurer shall withhold from any other monies payable to a county
33 from whatever state funding source is available an amount necessary to
34 fulfill that county's requirement specified in this subsection. The state
35 treasurer may not withhold distributions from the Arizona highway user
36 revenue fund pursuant to title 28, chapter 18, article 2, Arizona Revised
37 Statutes. The state treasurer shall deposit the amounts withheld pursuant
38 to this subsection and amounts paid pursuant to subsection A of this
39 section in the long-term care system fund established by section 36-2913,
40 Arizona Revised Statutes.

41 Sec. 11. Sexually violent persons; county reimbursement;
42 fiscal year 2017-2018; deposit; tax distribution
43 withholding; definition

44 A. Notwithstanding any other law, if this state pays the costs of
45 commitment of a sexually violent person, the county shall reimburse the

1 department of health services for thirty-one percent of these costs for
2 fiscal year 2017-2018.

3 B. The department of health services shall deposit, pursuant to
4 sections 35-146 and 35-147, Arizona Revised Statutes, the reimbursements
5 under subsection A of this section in the Arizona state hospital fund
6 established by section 36-545.08, Arizona Revised Statutes.

7 C. Each county shall make the reimbursements for these costs as
8 specified in subsection A of this section within thirty days after a
9 request by the department of health services. If the county does not make
10 the reimbursement, the superintendent of the Arizona state hospital shall
11 notify the state treasurer of the amount owed and the treasurer shall
12 withhold the amount, including any additional interest as provided in
13 section 42-1123, Arizona Revised Statutes, from any transaction privilege
14 tax distributions to the county. The treasurer shall deposit, pursuant to
15 sections 35-146 and 35-147, Arizona Revised Statutes, the withholdings in
16 the Arizona state hospital fund established by section 36-545.08, Arizona
17 Revised Statutes.

18 D. Notwithstanding any other law, a county may meet any statutory
19 funding requirements of this section from any source of county revenue
20 designated by the county, including funds of any countywide special taxing
21 district of which the board of supervisors serves as the board of
22 directors.

23 E. County contributions made pursuant to this section are excluded
24 from the county expenditure limitations.

25 F. For the purposes of this section, "costs of commitment" means
26 the costs associated with the detainment of a person in a licensed
27 facility under the supervision of the superintendent of the Arizona state
28 hospital before the court determines that the person is sexually violent
29 and the cost of detainment of the person after the court has determined
30 that the person is sexually violent.

31 Sec. 12. Competency restoration treatment; city, town and
32 county reimbursement; fiscal year 2017-2018;
33 deposit; tax distribution withholding

34 A. Notwithstanding section 13-4512, Arizona Revised Statutes, if
35 this state pays the costs of a defendant's inpatient, in custody
36 competency restoration treatment pursuant to section 13-4512, Arizona
37 Revised Statutes, the city, town or county shall reimburse the department
38 of health services for one hundred percent of these costs for fiscal year
39 2017-2018.

40 B. The department of health services shall deposit, pursuant to
41 sections 35-146 and 35-147, Arizona Revised Statutes, the reimbursements
42 under subsection A of this section in the Arizona state hospital fund
43 established by section 36-545.08, Arizona Revised Statutes.

1 C. Each city, town and county shall make the reimbursements for
2 these costs as specified in subsection A of this section within thirty
3 days after a request by the department of health services. If the city,
4 town or county does not make the reimbursement, the superintendent of the
5 Arizona state hospital shall notify the state treasurer of the amount owed
6 and the treasurer shall withhold the amount, including any additional
7 interest as provided in section 42-1123, Arizona Revised Statutes, from
8 any transaction privilege tax distributions to the city, town or county.
9 The treasurer shall deposit, pursuant to sections 35-146 and 35-147,
10 Arizona Revised Statutes, the withholdings in the Arizona state hospital
11 fund established by section 36-545.08, Arizona Revised Statutes.

12 D. Notwithstanding any other law, a county may meet any statutory
13 funding requirements of this section from any source of county revenue
14 designated by the county, including funds of any countywide special taxing
15 district of which the board of supervisors serves as the board of
16 directors.

17 E. County contributions made pursuant to this section are excluded
18 from the county expenditure limitations.

19 Sec. 13. [AHCCCS; disproportionate share payments](#)

20 A. Disproportionate share payments for fiscal year 2017-2018 made
21 pursuant to section 36-2903.01, subsection 0, Arizona Revised Statutes,
22 include:

23 1. \$108,874,800 for a qualifying nonstate operated public hospital.
24 The Maricopa county special health care district shall provide a certified
25 public expense form for the amount of qualifying disproportionate share
26 hospital expenditures made on behalf of this state to the Arizona health
27 care cost containment system administration on or before May 1, 2018 for
28 all state plan years as required by the Arizona health care cost
29 containment system section 1115 waiver standard terms and conditions. The
30 administration shall assist the district in determining the amount of
31 qualifying disproportionate share hospital expenditures. Once the
32 administration files a claim with the federal government and receives
33 federal financial participation based on the amount certified by the
34 Maricopa county special health care district, if the certification is
35 equal to or less than \$108,874,800 and the administration determines that
36 the revised amount is correct pursuant to the methodology used by the
37 administration pursuant to section 36-2903.01, Arizona Revised Statutes,
38 the administration shall notify the governor, the president of the senate
39 and the speaker of the house of representatives, shall distribute
40 \$4,202,300 to the Maricopa county special health care district and shall
41 deposit the balance of the federal financial participation in the state
42 general fund. If the certification provided is for an amount less than
43 \$108,874,800 and the administration determines that the revised amount is
44 not correct pursuant to the methodology used by the administration
45 pursuant to section 36-2903.01, Arizona Revised Statutes, the

1 administration shall notify the governor, the president of the senate and
2 the speaker of the house of representatives and shall deposit the total
3 amount of the federal financial participation in the state general fund.
4 If the certification provided is for an amount greater than \$108,874,800,
5 the administration shall distribute \$4,202,300 to the Maricopa county
6 special health care district and shall deposit \$71,890,300 of the federal
7 financial participation in the state general fund. The administration may
8 make additional disproportionate share hospital payments to the Maricopa
9 county special health care district pursuant to section 36-2903.01,
10 subsection P, Arizona Revised Statutes, and subsection B of this section.

11 2. \$28,474,900 for the Arizona state hospital. The Arizona state
12 hospital shall provide a certified public expense form for the amount of
13 qualifying disproportionate share hospital expenditures made on behalf of
14 this state to the administration on or before March 31, 2018. The
15 administration shall assist the Arizona state hospital in determining the
16 amount of qualifying disproportionate share hospital expenditures. Once
17 the administration files a claim with the federal government and receives
18 federal financial participation based on the amount certified by the
19 Arizona state hospital, the administration shall distribute the entire
20 amount of federal financial participation to the state general fund. If
21 the certification provided is for an amount less than \$28,474,900, the
22 administration shall notify the governor, the president of the senate and
23 the speaker of the house of representatives and shall distribute the
24 entire amount of federal financial participation to the state general
25 fund. The certified public expense form provided by the Arizona state
26 hospital shall contain both the total amount of qualifying
27 disproportionate share hospital expenditures and the amount limited by
28 section 1923(g) of the social security act.

29 3. \$884,800 for private qualifying disproportionate share
30 hospitals. The Arizona health care cost containment system administration
31 shall make payments to hospitals consistent with this appropriation and
32 the terms of the section 1115 waiver, but payments are limited to those
33 hospitals that either:

34 (a) Meet the mandatory definition of disproportionate share
35 qualifying hospitals under section 1923 of the social security act.

36 (b) Are located in Yuma county and contain at least three hundred
37 beds.

38 B. After the distributions made pursuant to subsection A of this
39 section, the allocations of disproportionate share hospital payments made
40 pursuant to section 36-2903.01, subsection P, Arizona Revised Statutes,
41 shall be made available first to qualifying private hospitals located
42 outside of the Phoenix metropolitan statistical area and the Tucson
43 metropolitan statistical area before being made available to qualifying
44 hospitals within the Phoenix metropolitan statistical area and the Tucson
45 metropolitan statistical area.

1 Sec. 14. AHCCCS transfer; counties; federal monies

2 On or before December 31, 2018, notwithstanding any other law, for
3 fiscal year 2017-2018 the Arizona health care cost containment system
4 administration shall transfer to the counties the portion, if any, as may
5 be necessary to comply with section 10201(c)(6) of the patient protection
6 and affordable care act (P.L. 111-148), regarding the counties'
7 proportional share of this state's contribution.

8 Sec. 15. County acute care contribution; fiscal year
9 2017-2018

10 A. Notwithstanding section 11-292, Arizona Revised Statutes, for
11 fiscal year 2017-2018 for the provision of hospitalization and medical
12 care, the counties shall contribute the following amounts:

13 1. Apache	\$ 268,800
14 2. Cochise	\$ 2,214,800
15 3. Coconino	\$ 742,900
16 4. Gila	\$ 1,413,200
17 5. Graham	\$ 536,200
18 6. Greenlee	\$ 190,700
19 7. La Paz	\$ 212,100
20 8. Maricopa	\$18,783,100
21 9. Mohave	\$ 1,237,700
22 10. Navajo	\$ 310,800
23 11. Pima	\$14,951,800
24 12. Pinal	\$ 2,715,600
25 13. Santa Cruz	\$ 482,800
26 14. Yavapai	\$ 1,427,800
27 15. Yuma	\$ 1,325,100

28 B. If a county does not provide funding as specified in subsection
29 A of this section, the state treasurer shall subtract the amount owed by
30 the county to the Arizona health care cost containment system fund and the
31 long-term care system fund established by section 36-2913, Arizona Revised
32 Statutes, from any payments required to be made by the state treasurer to
33 that county pursuant to section 42-5029, subsection D, paragraph 2,
34 Arizona Revised Statutes, plus interest on that amount pursuant to section
35 44-1201, Arizona Revised Statutes, retroactive to the first day the
36 funding was due. If the monies the state treasurer withholds are
37 insufficient to meet that county's funding requirements as specified in
38 subsection A of this section, the state treasurer shall withhold from any
39 other monies payable to that county from whatever state funding source is
40 available an amount necessary to fulfill that county's requirement. The
41 state treasurer may not withhold distributions from the Arizona highway
42 user revenue fund pursuant to title 28, chapter 18, article 2, Arizona
43 Revised Statutes.

1 C. Payment of an amount equal to one-twelfth of the total amount
2 determined pursuant to subsection A of this section shall be made to the
3 state treasurer on or before the fifth day of each month. On request from
4 the director of the Arizona health care cost containment system
5 administration, the state treasurer shall require that up to three months'
6 payments be made in advance, if necessary.

7 D. The state treasurer shall deposit the amounts paid pursuant to
8 subsection C of this section and amounts withheld pursuant to subsection B
9 of this section in the Arizona health care cost containment system fund
10 and the long-term care system fund established by section 36-2913, Arizona
11 Revised Statutes.

12 E. If payments made pursuant to subsection C of this section exceed
13 the amount required to meet the costs incurred by the Arizona health care
14 cost containment system for the hospitalization and medical care of those
15 persons defined as an eligible person pursuant to section 36-2901,
16 paragraph 6, subdivisions (a), (b) and (c), Arizona Revised Statutes, the
17 director of the Arizona health care cost containment system administration
18 may instruct the state treasurer either to reduce remaining payments to be
19 paid pursuant to this section by a specified amount or to provide to the
20 counties specified amounts from the Arizona health care cost containment
21 system fund and the long-term care system fund established by section
22 36-2913, Arizona Revised Statutes.

23 F. It is the intent of the legislature that the Maricopa county
24 contribution pursuant to subsection A of this section be reduced in each
25 subsequent year according to the changes in the GDP price deflator. For
26 the purposes of this subsection, "GDP price deflator" has the same meaning
27 prescribed in section 41-563, Arizona Revised Statutes.

28 Sec. 16. Hospitalization and medical care contribution;
29 fiscal year 2017-2018

30 A. Notwithstanding any other law, for fiscal year 2017-2018,
31 beginning with the second monthly distribution of transaction privilege
32 tax revenues, the state treasurer shall withhold one-eleventh of the
33 following amounts from state transaction privilege tax revenues otherwise
34 distributable, after any amounts withheld for the county long-term care
35 contribution or the county administration contribution pursuant to section
36 11-292, subsection 0, Arizona Revised Statutes, for deposit in the Arizona
37 health care cost containment system fund established by section 36-2913,
38 Arizona Revised Statutes, for the provision of hospitalization and medical
39 care:

40	1. Apache	\$ 87,300
41	2. Cochise	\$ 162,700
42	3. Coconino	\$ 160,500
43	4. Gila	\$ 65,900
44	5. Graham	\$ 46,800
45	6. Greenlee	\$ 12,000

1	7. La Paz	\$ 24,900
2	8. Mohave	\$ 187,400
3	9. Navajo	\$ 122,800
4	10. Pima	\$1,115,900
5	11. Pinal	\$ 218,300
6	12. Santa Cruz	\$ 51,600
7	13. Yavapai	\$ 206,200
8	14. Yuma	\$ 183,900

9 B. If the monies the state treasurer withholds are insufficient to
10 meet a county's funding requirement as specified in subsection A of this
11 section, the state treasurer shall withhold from any other monies payable
12 to that county from whatever state funding source is available an amount
13 necessary to fulfill that county's requirement. The state treasurer may
14 not withhold distributions from the Arizona highway user revenue fund
15 pursuant to title 28, chapter 18, article 2, Arizona Revised Statutes.

16 C. On request from the director of the Arizona health care cost
17 containment system administration, the state treasurer shall require that
18 up to three months' payments be made in advance.

19 D. In fiscal year 2017-2018, the sum of \$2,646,200 withheld
20 pursuant to subsection A of this section is allocated for the county acute
21 care contribution for the provision of hospitalization and medical care
22 services administered by the Arizona health care cost containment system
23 administration.

24 E. County contributions made pursuant to this section are excluded
25 from the county expenditure limitations.

26 Sec. 17. Proposition 204 administration; county expenditure
27 limitations

28 County contributions for the administrative costs of implementing
29 sections 36-2901.01 and 36-2901.04, Arizona Revised Statutes, that are
30 made pursuant to section 11-292, subsection 0, Arizona Revised Statutes,
31 are excluded from the county expenditure limitations.

32 Sec. 18. Department long-term care system fund; use of
33 unexpended and unencumbered capitation payments;
34 review; retroactivity; delayed repeal

35 A. Notwithstanding section 36-2953, subsection H, Arizona Revised
36 Statutes, as amended by this act, the department of economic security may
37 use unexpended and unencumbered monies from capitation payments in the
38 department long-term care system fund established by section 36-2953,
39 Arizona Revised Statutes, as amended by this act, for state-only program
40 expenses within the division of developmental disabilities. Before making
41 any expenditures authorized by this subsection, the department of economic
42 security shall submit an expenditure plan for review by the joint
43 legislative budget committee.

1 B. Subsection A of this section applies retroactively to from and
2 after June 30, 2017.

3 C. This section is repealed from and after June 30, 2018.

4 Sec. 19. AHCCCS; risk contingency rate setting

5 Notwithstanding any other law, for the contract year beginning
6 October 1, 2017 and ending September 30, 2018, the Arizona health care
7 cost containment system administration may continue the risk contingency
8 rate setting for all managed care organizations and the funding for all
9 managed care organizations administrative funding levels that were imposed
10 for the contract year beginning October 1, 2010 and ending September 30,
11 2011.

12 Sec. 20. AHCCCS; social security administration; medicare
13 liability waiver; reports

14 The Arizona health care cost containment system may participate in
15 any special disability workload section 1115 demonstration waiver offered
16 by the centers for medicare and medicaid services. Any credits provided
17 by the section 1115 demonstration waiver process are to be used in the
18 fiscal year when those credits are made available to fund the state share
19 of any medical assistance expenditures that qualify for federal financial
20 participation under the medicaid program. The Arizona health care cost
21 containment system administration shall report the receipt of any credits
22 to the director of the joint legislative budget committee on or before
23 December 31, 2017 and June 30, 2018.

24 Sec. 21. Hospital charge master transparency; joint report

25 On or before January 2, 2018, the director of the Arizona health
26 care cost containment system administration and the director of the
27 department of health services shall submit a joint report on hospital
28 charge master transparency to the governor, the speaker of the house of
29 representatives and the president of the senate and shall provide a copy
30 to the secretary of state. The report shall provide a summary of the
31 current charge master reporting process, a summary of hospital billed
32 charges compared to costs and examples of how charge masters or hospital
33 prices are reported and used in other states. The report shall include
34 recommendations to improve this state's use of hospital charge master
35 information, including reporting and oversight changes.

36 Sec. 22. Inpatient psychiatric treatment; report

37 A. On or before January 2, 2018, the director of the Arizona health
38 care cost containment system administration shall submit a report to the
39 director of the joint legislative budget committee on the availability of
40 inpatient psychiatric treatment both for adults and for children and
41 adolescents who receive services from the regional behavioral health
42 authorities. The report shall include all of the following information:

43 1. The total number of inpatient psychiatric treatment beds
44 available and the occupancy rate for those beds.

1 2. Expenditures on inpatient psychiatric treatment.

2 3. The total number of individuals in this state who are sent out
3 of state for inpatient psychiatric care.

4 4. The prevalence of psychiatric boarding or the holding of
5 psychiatric patients in emergency rooms for at least twenty-four hours
6 before transferring the patient to a psychiatric facility.

7 B. The report shall provide the information specified in subsection
8 A of this section separately for adults who are at least twenty-two years
9 of age and for children and adolescents who are twenty-one years of age or
10 younger.

11 Sec. 23. Health services lottery monies fund; use; fiscal
12 year 2017-2018

13 Notwithstanding sections 5-572 and 36-108.01, Arizona Revised
14 Statutes, monies in the health services lottery monies fund established by
15 section 36-108.01, Arizona Revised Statutes, may be used for the purposes
16 specified in the fiscal year 2017-2018 general appropriations act.

17 Sec. 24. Department of health services; health research
18 account; Alzheimer's disease research

19 Notwithstanding section 36-773, Arizona Revised Statutes, the
20 department of health services may use monies in the health research
21 account established by section 36-773, Arizona Revised Statutes, in an
22 amount specified in the general appropriations act for Alzheimer's disease
23 research.

24 Sec. 25. Intent; implementation of program

25 It is the intent of the legislature that for fiscal year 2017-2018
26 the Arizona health care cost containment system administration implement a
27 program within the available appropriation.