

## *Defending Medicaid Restoration and Expansion: Protecting the Safety Net*

### The Issue

In January 2013, Governor Jan Brewer proposed lifting the enrollment freeze on Prop. 204, which had been in effect for 18 months. She recommended taking advantage of the enhanced Medicaid match rate for childless adults provided for in the *Affordable Care Act (ACA)* and funding the state match through an assessment on hospitals. A federal requirement of this proposal entailed expanding Medicaid coverage to 133 percent of the federal poverty rate (FPL). After a contentious legislative session, Gov. Brewer's proposal passed with bipartisan support. But roadblocks remain. The Goldwater Institute has filed litigation, alleging the legislation, as passed, is unconstitutional.

### AzHHA's Position

AzHHA strongly supports the restoration of the Prop. 204 program as enacted by the Legislature in 2013. AzHHA will vigorously defend the legislation from opposition efforts to repeal or limit it. This position is an extension of the AzHHA Board's unanimous support for the governor's proposal, including doing all it could to achieve passage into law. AzHHA will now do all it can to protect and defend the law.

### Background

In response to budget shortfalls associated with the Great Recession, Arizona lawmakers froze enrollment of childless adults into the Prop. 204 program, effective July 1, 2011. Over the next 18 months, enrollment dropped by 141,000 people. Thousands of chronically ill residents were unable to access appropriate medical care, and hospital emergency departments became overwhelmed with the uninsured. Hospital uncompensated care doubled to more than 7 percent during this period—a projected cost of \$777 million for 2012.

Citing the struggles that Arizonans, including hospitals and other healthcare providers, were facing, Gov. Brewer in her 2013 State of the State Address proposed restoring funding for the Prop. 204 program and lifting the enrollment freeze. She argued that—despite her strong opposition to the ACA—the state for practical reasons should take advantage of the enhanced Medicaid match rate available through the law. This enhanced match rate would make restoration of Prop. 204 financially feasible. She further proposed that the state match be funded through an assessment on hospitals. The assessment would replace general fund support for the Prop. 204 program and fund the cost of expanding to 133 percent FPL—an expansion the federal government required if the state were to receive the enhanced match rate. If the governor’s proposal were not approved, the Arizona Health Care Cost Containment System (AHCCCS) Administration contended that more than 50,000 childless adults remaining in the program at the end of 2013 could lose coverage at that time due to the expiration of the state’s waiver authority to cover childless adults on December 31, 2013.

Many conservative activists and legislators opposed the governor’s proposal. Healthcare and business groups and patient advocates were supportive. The AzHHA membership and Board of Directors reviewed the governor’s proposal, and in March 2013 the AzHHA Board voted unanimously to support it, including the use of a hospital assessment to leverage enhanced federal matching funds. The Board also pledged to do all it could to achieve passage of the legislation and authorized staff to commit an additional \$500,000 to affect such passage.

After a contentious legislative session, the proposal passed with bipartisan support (Laws 2013, First Special Session, Chapter 10). Opponents worked over the summer to collect signatures for a referendum but were ultimately unsuccessful in collecting and filing the approximate 87,000 needed. Immediately after the signature-filing deadline, the Goldwater Institute filed suit in Superior Court on behalf of 36 lawmakers and three private citizens alleging the bill violates the Arizona Constitution. The petition asks the court to enjoin collection of the provider assessment and declare that it violates the Constitution’s Prop. 108 and separation-of-powers clauses.

### Analysis

Prop. 108, enacted in 1992, requires a two-thirds approval in the Legislature for any measure that results in a *“net increase in state revenues.”* There is an exception for *“fees and assessments that are authorized by statute, but are not prescribed by formula, amount or limit, and are set by a state officer or agency.”* The Legislature has routinely made use of this exception over the years.

For example, during the recent recession, the Legislature authorized agency heads to increase and/or establish licensure and other fees to offset general fund cuts—statutory authorizations that were not approved by a two-thirds majority.

The provider assessment that will fund restoration of Prop. 204 and Medicaid expansion was similarly enacted. Under the legislation, the AHCCCS director is authorized to establish and collect the assessment. The legislation requires the director to “adopt rules regarding the method for determining the assessment, the amount or rate of the assessment, and modifications or exemptions from the assessment.” The measure did not include a Prop. 108 clause and, as such, was approved by a simple majority.

The Goldwater Institute notes the courts have never interpreted what is properly included within the “exceptions” provision of Prop. 108. They contend that a broad interpretation of the provision would “swallow the rule,” and thus, the provision should be interpreted narrowly. Their petition argues that the provider assessment should fall outside of this narrow exception and, as a result, the court should rule its enactment unconstitutional. In addition, the lawsuit argues that the legislation violates the separations-of-powers provision of the Arizona Constitution by relinquishing the Legislature’s taxing authority to the AHCCCS director.

## Our Position

AzHHA strongly supports restoration of the Prop. 204 program as enacted by Laws 2013, First Special Session, Chapter 10. The plan proposed by Gov. Brewer was the most fiscally viable solution for the state. It will ensure that more than 50,000 Arizonans will not lose insurance coverage at the end of the year, and many more will gain access to the right care at the right time—thus reducing overreliance on emergency department services, which will mitigate the cost of hospital uncompensated care.

AzHHA is deeply committed to preserving the health coverage that the legislation will provide to hundreds of thousands of Arizonans. As such, the Association opposes the Goldwater Institute’s lawsuit and will vigorously defend the measure as necessary—in the courts, at the Legislature, or wherever it is challenged.