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**JUN 28 2005**  
CLERK U.S. DISTRICT COURT  
DISTRICT OF ARIZONA  
BY *[Signature]* DEPUTY

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Peg Ball, et al.,  
Plaintiffs,  
v.  
Phyllis Biedess, Director of Arizona  
Health Care Cost Containment System, et  
al.,  
Defendants.

No. CIV 00-0067-TUC-EHC  
**ORDER**

On August 13, 2004, the Court issued Findings of Fact, Conclusions of Law, and an Order [Dk. 212] ("Injunction"), which are adopted herein by reference. For the reasons stated in the Injunction, and pursuant to the Court's Order of May 25, 2005 [Dk. 243], the parties' proposed schedules for and modifications to the Injunction [Dks. 221, 222, 244, 245, 246], the parties' reports describing the extent to which Defendants are complying with the Injunction [Dks. 236, 239], and the hearings held on February 22, 2005 and June 27, 2005,

**IT IS ORDERED:**

1. That the Arizona Health Care Cost Containment System (AHCCCS) program provide each individual who qualifies for critical services ("qualified individual") with those critical services for which the individual qualifies without gaps in critical services.

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- 1 A. Critical services include personal care services such as bathing, toileting,  
2 dressing, feeding, transferring to or from beds or wheelchairs, and  
3 assistance with other similar daily activities.
- 4 B. A gap in critical services is defined as the difference between the number of  
5 hours of home care worker critical service scheduled in each qualified  
6 individual's HCBS care plan and the hours of the scheduled type of critical  
7 service that are actually delivered to the qualified individual.
- 8 C. By **August 15, 2005**, Defendants shall finalize a system for providing home  
9 care services to individuals eligible for Home and Community Based  
10 Services (HCBS) under the Arizona Long Term Care System without gaps  
11 in critical services.
- 12 D. Contracts should require that Program Contractors provide each qualified  
13 individual with critical services without gaps in those services.  
14 Unforeseeable gaps are to be corrected as quickly as possible, at least  
15 within two hours. Program Contractors should be required to have back-up  
16 staffing available on-call to substitute for those times when an  
17 unforeseeable gap occurs. Qualified individuals' other scheduled HCBS  
18 services may not be reduced because the cost of correcting a gap in critical  
19 services exceeds the cost of the service in which the gap occurred.

20 2. That, by **August 15, 2005**, the AHCCCS program develop adequate alternative  
21 or contingency plans for instances when a critical service is unable to be provided.

22 3. That the AHCCCS program provide a rate of pay to health care workers so as to  
23 deliver those critical services for which each individual qualifies; that is, to attract enough  
24 health care workers to deliver the critical services for which an individual qualifies. The  
25 rate of pay should attract sufficient providers to ensure that services are as available to  
26 AHCCCS-eligible persons as they are to other members of the general public in the same  
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1 geographic area. Defendants' basis for determining rates of pay for home care workers  
2 shall be set out in a written regulation or published policy statement.

- 3       A. Defendants shall include the following factors in the rate-setting  
4       ("rebasings") process: Medicare rates, private sector rates, costs for  
5       delivering services, any economic factors unique to Arizona, and current  
6       levels of supply and demand. The "rebasings" process that Defendants adopt  
7       must directly consider data about gaps in critical services as an indicator  
8       that wages currently paid to home care workers are too low.
- 9       B. Defendants shall collect information from their Program Contractors at least  
10      every six months about home care workers' current wage levels and  
11      benefits.
- 12      C. The information that Defendants collect pursuant to paragraphs 1(A) and  
13      1(B) shall be made public at least annually, beginning on **August 15, 2005**.
- 14      D. By **October 15, 2005**, Defendants shall file an independent study of the  
15      private sector's delivery of HCBS services in Arizona which analyzes the  
16      extent to which HCBS critical services are as available to AHCCCS  
17      members as they are to members of the general population.

18      4. That AHCCCS program need not offer a particular (e.g., a minimum) rate of  
19      pay, just a rate of pay which guarantees that each qualified individual will receive critical  
20      services without gaps.

21      5. That AHCCCS monitor its entire program so that any critical services that are  
22      not being provided can be detected in enough time to implement the alternative or  
23      contingency plan and eliminate the gap in less than two hours.

- 24      A. Defendants shall file annual reports, beginning on **August 15, 2005**,  
25      concerning their methods for monitoring gaps in critical services throughout  
26      the state.

1 B. Defendants shall file a report of gaps in critical services on the first of each  
2 month, beginning **September 1, 2005**. The monthly report shall include  
3 Service Logs which have been redacted to protect beneficiaries' privacy.

4 6. That AHCCCS implement an expedited grievance process by **August 15, 2005**  
5 whereby each qualified individual: 1) may call a hotline and speak with a live operator to  
6 report any gap in critical services; 2) is provided with a standardized form to complete  
7 and mail to report this gap; and 3) receives a response, via telephone or the mails,  
8 acknowledging the gap and providing a detailed explanation as to the reason for the gap  
9 and the alternative plan being created to rectify that gap and any possible future gaps.

10 7. That AHCCCS inform all qualified individuals of their rights pursuant to this  
11 Order by **August 15, 2005**.

12 8. That the Court retain jurisdiction of this case through **December 31, 2008**.

13 **IT IS FURTHER ORDERED** that Plaintiffs shall have until **July 29, 2005** to file  
14 a fee petition.

15 Dated this 28 day of June, 2005.

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18 Earl H. Carroll  
19 United States District Judge

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