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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Sharon Newton-Nations; Manuela  
9 Gonzalez; Cheryl Bilbrey; Hector  
Martinez; Dawn House; Dana Franklin;  
10 Edward Bonner; D.H.; Jack Baumhardt;  
Manuel Esparza,

No. CV 03-2506-PHX-EHC

Ninth Circuit No. 10-16193

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Plaintiffs,

**ORDER**

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and

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Donald McCants; Anne Garrison; Patricia  
14 Jones; Todd Eaton, on behalf of  
themselves and all others similarly  
15 situated,

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Plaintiffs-Appellants,

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vs.

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Thomas J. Betlach, Director of the Arizona  
Health Care Cost Containment System;  
19 and Kathleen Sebelius, Secretary of the  
United States Department of Health and  
20 Human Services, in their official  
capacities,

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Defendants - Appellees.

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On March 29, 2010, the Court filed an Order granting Defendants' Motions for  
25 Summary Judgment, denying Plaintiffs' Motion for Summary Judgment, and vacating the  
26 previously imposed preliminary injunction (Doc. 186 - Order). Judgment was entered in  
27 favor of Defendants and against Plaintiffs on March 29, 2010 (Doc. 187).

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On May 25, 2010, Plaintiff Class Representatives filed a Notice of Appeal (Doc. 188).

1 On August 6, 2010, Plaintiffs filed a Motion for a Stay of Judgment or, in the  
2 alternative, Injunction Pending Appeal (Doc. 195), and supporting Memorandum (Doc. 194,  
3 201). The matter is now fully briefed by the parties (Doc. 204-206, 208, 211-212). Plaintiffs  
4 have filed an unopposed Motion for an Expedited Decision (Doc. 213).

5 On September 20, 2010, Plaintiffs' Motion for Stay or Injunction Pending Appeal  
6 came before the Court for a hearing. Counsel for the parties appeared by telephone at the  
7 hearing. During the hearing, defense counsel agreed that the Court has jurisdiction to  
8 consider Plaintiffs' motion for stay or injunction, including ordering a stay of 30 days so  
9 Plaintiffs could seek relief in the Court of Appeals. Plaintiffs' counsel informed the Court  
10 that a whole new administrative rule was approved on July 13, 2010 regarding the increased  
11 copayments (see Doc. 201 - Plaintiffs' Memorandum at 5). Plaintiffs argue that the  
12 challenged copayments for medical services are included in the Arizona administrative rule  
13 set to become effective October 1, 2010.

14 The Court will grant in part and deny without prejudice in part Plaintiffs' Motion for  
15 a Stay of Judgment or, in the alternative, Injunction Pending Appeal.

16 Accordingly,

17 **IT IS ORDERED** that Plaintiffs' Motion for an Expedited Decision (Doc. 213) is  
18 granted.

19 **IT IS FURTHER ORDERED** that Plaintiffs' Motion for a Stay of Judgment or, in  
20 the alternative, Injunction Pending Appeal (Doc. 195) is granted in part and denied without  
21 prejudice in part.

22 **IT IS FURTHER ORDERED** that Plaintiffs' Motion for a Stay of Judgment or, in  
23 the alternative, Injunction Pending Appeal (Doc. 195) is granted for 30 days from the  
24 October 1, 2010 effective date of the copayments to the right of Plaintiffs to seek relief in the  
25 Court of Appeals for the Ninth Circuit. Plaintiffs' Motion for Stay or Injunction in all other  
26 respects is denied without prejudice.

1 DATED this 23<sup>rd</sup> day of September, 2010.

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3 *Earl H. Carroll*

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5 Earl H. Carroll  
6 United States District Judge  
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