



Medicaid Work Requirements: An Update and Path Forward

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Medicaid – What is it?

- Medicaid provides health coverage to millions of Americans, including eligible low-income adults, children, pregnant women, elderly adults and people with disabilities
- Joint Federal and State Program
 - Funded by Federal Government and States
 - Managed by States according to certain federal requirements
- Created in 1965 by adding Title XIX to the Social Security Act
- Section 1115 of the Social Security Act permits states to test new approaches in Medicaid that differ from federal rules
- As of 2017, provides health care to 74 million people

Medicaid – How Does it affect AI/AN?

- Medicaid Expansion
 - Expanded coverage to all individuals living at or below 138% of the federal poverty level (FPL)
 - More AI/ANs who enrolled were able to get access to specialty care
- Since the expansion of Medicaid some 237,000 American Indians and Alaska Natives in 19 states have become insured.
- IHS estimates that Medicaid accounts for roughly 70% of its 3rd Party Revenue
 - \$840,000,000 in revenue to IHS
- Medicaid is a Critical Resource for the Indian Health System

2017 – Medicaid Reform

- 2016 Elections – New Administration, New Congress
- Expressed Support for Medicaid Reform
- Congressional Actions
 - ACA Repeal and Replace
 - Block Grants/Caps
 - Medicaid Work Requirements
- Administrative Actions
 - March 14th Letter to State Governors
 - Grant States more flexibility in operation of their Medicaid Programs
 - Fast track waivers and demonstration projects
 - Support work requirements

Administration Actions on Medicaid

- On January 11, 2018 CMS issued a Dear State Medicaid Director Letter entitled: “Opportunities to Promote Work and Community Engagement Among Medicaid Beneficiaries”
 - Supported Continued State-Tribal Consultation
 - Encouraged States to Consider Tribal Work Support Programs as Meeting Requirements
- January 12, 2018 – CMS Approved Kentucky Waiver Implementing Work Requirements
- January 17, 2018 – Administrator Verma met with Tribal Leaders at STAC and Indicated CMS could not provide a blanket exemption for AI/AN due to “Civil Rights Concerns”
 - Recommended Talking to HHS Division of Civil Rights
- January 17, 2018 – CMS Issued a Dear Tribal Leader Letter Stating that CMS Could not provide an exemption for AI/ANs because of Civil Rights Reasons

Work Requirements do not Work in Indian Country

- **The IHS System Relies on Medicaid**
- **Work Requirements will not incentivize AI/ANs to work**
 - Unlike other Medicaid enrollees, AI/ANs have a right to access IHS services.
 - AI/ANs would not need to meet mandatory work requirements to obtain coverage and may instead simply elect not to enroll in Medicaid
- **Mandatory Work Requirements are Inconsistent with Federal Treaty and Trust Obligations**
 - Mandatory work requirements will pose an artificial barrier to access to the Medicaid program that is unique to AI/ANs
 - The United States has a duty to implement programs like the Medicaid program in a way that does not inadvertently raise barriers to participation by AI/ANs.

Tribal Response

- February 14, 2018 – TTAG letter to CMS Opposing Work Requirements and Providing Legal Memoranda on Incorrect Interpretation by the Division of Civil Rights
- March 6, 2018 – TTAG Letter requesting an immediate meeting with the Office of Civil Rights and CMS leadership on Work Requirements
- April 11, 2018 – Tribal Delegation Met with CMS Leadership, CMS OGC, HHS OCR
 - HHS and CMS stated they could not provide a blanket exemption for AI/AN due to Civil Rights and Constitutional Concerns
 - No Statutory Authority to Exempt
 - Could not provide specific information around their “concerns” due to ongoing litigation and privileged communication
- April/May 2018 – Tribal leaders work with members of Congress to send letters to Secretary Azar and Administrator Verma supporting Tribal Sovereignty and Political Status of Tribes

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- May 9-10, 2018 – Secretary’s Tribal Advisory Committee met with CMS and HHS leadership.
 - Committed to working with Tribes on a government-to-government basis
 - Give States flexibility and discretion to implement work and community engagement requirements.
- June 29, 2018, a federal judge in Kentucky blocked the state from instituting Medicaid work requirements. The judge determined that the Secretary’s approval of the Kentucky waiver was arbitrary and capricious because it did not meet the purposes of the Medicaid program. The Kentucky waiver is remanded back to HHS.

Continued...

- House Labor HHS Appropriations Subcommittee Report
 - *"Federally-recognized Indian Tribes are sovereign nations residing within a State. Moreover, Indian Tribes are political, sovereign entities to which the Federal government owes a trust responsibility. As a result of this responsibility, the Federal government has consistently held Indian Tribes as a unique group when applying Federal law and policy. Congress has routinely codified this relationship, most notably in the provision of health care by establishing a health system for Tribal populations exclusively. In addition, the Federal government has enacted exemptions to ensure States would not bear the burden of additional costs. Specifically, the Social Security Act provides a 100 percent Federal match for Medicaid services provided by an Indian or by an Indian Health Service or Tribally-operated facility. No discretionary action taken by any Administration can impede the direct relationship between the Federal government and the provision of health care for Indian Tribes."*

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- July 25, 2018, CMS indicated that they are maintaining its position that approving a State Demonstration Project that contains an exemption to work requirements would raise civil rights concerns. CMS stated that they are no longer willing to consider alternatives to an exemption from work requirements for AI/ANs that have been proposed by State and Tribal governments. Mr. Lynch indicated during the TTAG meeting that the alternatives being proposed by States and Tribes that include both AI/ANs and non-Indians were simply clever ways to achieve a full exemption for AI/ANs.
- August, 2018
 - SD Waiver Submitted
- September, 2018
 - Michigan Waiver Submitted

NIHB Efforts

- **April 20, 2018**, NIHB organized call with National Tribal organizations to ascertain the scope of the “Civil Rights” issue. The following organizations participated: NIHB, NCAI, Native American Rights Fund, Native American Contractors Association, USET, National Indian Child Welfare Association, and the Native American Finance Officers Association
- **August 28, 2018**, NIHB co-hosted a day-long discussion with National Tribal organizations to strategize about next steps to combat the administration’s decision within the CMS context but also broadly.
- **November, 2018**, NIHB Tribal organizations, and Tribal leaders will embark on a comprehensive media campaign to educate people on the political status of Tribes and Tribal sovereignty

Questions?

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