

National Indian Health Board



July 16, 2012

Kansas Department of Health and Environment
Division of Health Care Finance
1000 SW Jackson Street, Suite 560
Topeka, Kansas 66612

Delivered via email

RE: NIHB Comments to the Kansas Department of Health and Environment Section 1115 KanCare Demonstration Application

Dear Ms. Bruffett:

The National Indian Health Board (NIHB) is submitting this letter in response to the request for comments regarding the State of Kansas' Section 1115 KanCare Demonstration Application Waiver. NIHB respectfully submits these comments in support of the comments and recommendations submitted by the Prairie Band Potawatomi Nation and the National Council of Urban Indian Health on July 3, 2012.

Established 40 years ago, NIHB is a national inter-Tribal organization that advocates on behalf of Tribal governments for the delivery of quality health care to all American Indians and Alaska Natives (AI/ANs). NIHB is governed by a Board of Directors consisting of a representative from each of the twelve Indian Health Service (IHS) Areas. Each Area Health Board elects a representative to sit on the NIHB Board of Directors. Whether Tribes operate their entire health care program through contracts or compacts with the IHS, or continue to rely on IHS for delivery of some, or even most, of their health care, NIHB is their advocate.

Background of Federal Trust Responsibility and the Indian Health Care Delivery System

When Indian Tribes ceded certain lands – lands which now constitute the United States – agreements were made with the United States government. Among them was the establishment of a "trust" responsibility for the safety and well-being of Indian peoples in perpetuity. In addition, a number of the treaties specifically outlined the provision of education, nutrition, and health care. Since the creation of the Indian reservation system, and the subsequent federal policy of trying to move Indians to specific urban communities, the United States government has implemented the trust and treaty health care obligation through the Indian Health Care Providers, comprised of the IHS, Tribes and Tribal organizations, and urban Indian organizations. Collectively, these entities are sometimes referred to as "I/T/U" or the Indian health care delivery system.



Nationally, the I/T/U system serves approximately 2 million Native people and medical and dental care is delivered through more than 600 health care facilities. The Indian health care system provides direct care to Indian patients and referral services for care that the Indian health care system is not able to provide itself. Most beneficiaries served by the I/T/Us live on very remote, sparsely populated reservations and Alaska Native Villages. The I/T/Us were designed in large part to reach these beneficiaries, who often have no other options. Even in more populated urban areas, the Indian health care delivery system provides the most meaningful access as it is the only culturally competent provider and the only provider with a direct Federal-tribal relationship. In essence, it is Indian Country's health care home.

Therefore, the incentives in the Indian health care delivery system are not financial; its mission is the improvement of the health status of Indian people. This is done by increasing access and quality of health care delivered to individual tribal members. The federal trust responsibility to Indian people and the Indian health system contains necessary protections in law and requires specific language in programs and laws to prevent unintended adverse consequences to this Indian health care delivery system.

Under provisions of the Indian Health Care Improvement Act (IHCA), Medicaid has become an important additional means through which the resources to fulfill the Federal Trust Responsibility have been made available. Today, many states like Kansas are and will continue to change the structure of the states' Medicaid programs. We are writing to ask that such changes do not have negative impacts on the Indian health delivery system for AI/ANs and that the Federally recognized Tribes within the borders of Kansas are engaged in meaningful discussions that will impact their citizens.

Tribal Consultation

As you know, the American Recovery and Reinvestment Act (ARRA) added a provision to the Social Security Act requiring States to solicit advice from I/T/U providers prior to submission of a Medicaid State plan amendment. The intent of this provision is to ensure there is meaningful engagement between Tribes and the State before the State makes changes to Medicaid. To avoid significant possible complications and disruptions to Medicaid services to the Indian beneficiaries and the I/T/Us, State-Tribal consultation provides an opportunity for the Tribes and States to engage prior to the submission of a waiver. This helps to ensure that Tribal health programs are included as an integral part of the State waiver plan. We appreciate that the State of Kansas conduct Tribal Consultation on this matter and hope this will continue with this work.

We also support the recommendation of the creation of a State Tribal Technical Advisory Group. This type of workgroup can serve as another forum for dialogue and discussion between representatives from the Tribes, I/T/Us and the State. At the national level, the Tribal Technical Advisory Group (TTAG) to the Centers for Medicare and Medicaid Services (CMS) plays this critical role. TTAG is a tribal advisory committee that was codified by the ARRA and is comprised of formally-appointed representatives from each IHS Area as well as from specific national Indian organizations. TTAG advises CMS on Indian issues related to Medicare, Medicaid, the Children's Health Insurance Program (CHIP), and any other health care program funded (in whole or part) by CMS. The Federal TTAG has been instrumental in identifying issues and working with CMS in addressing current problems and possible issues in forthcoming problems. We believe a state level TTAG would be instrumental in Kansas as the State goes forward in the reforming the State's Medicaid and other health programs.



Indian Protections

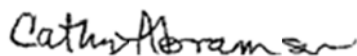
The NIHB stands with the Kansas Tribes and NCUIH in opposition to any attempt to waive any of the federal statutory protections for AI/ANs and I/T/Us, especially many of the protections included in the ARRA. In particular, we ask that Kansas revise its waiver application to honor Section 1932(a)(2)(C) of the Social Security Act that prohibits states from requiring the mandatory enrollment of AI/ANs in managed care.

Indian Addendum

NIHB supports the recommendation for the use of a Tribal Addendum to the State-MCO contracts and Provider-MCO contracts. The idea of using a special addendum to facilitate participation by Indian health providers is not a novel one. Such a tool has been in use by the Medicare Part D prescription drug program since its inception. When implementing that program, CMS directed Part D plan sponsors to offer network contracts to I/T/U pharmacies in their service areas with an addendum containing conditions specified in CMS guidance. By setting out applicable Federal law in a single comprehensive Indian contract addendum, the I/T/U addendum has both improved compliance with Federal law as well as reduced the costs and administrative burdens associated with negotiating these provisions for both the Part D plans and I/T/U providers. This mechanism has proved to be efficient, effective and easy to use for both Part D plan sponsors and Indian health pharmacies; it is now a standard component of the Part D program. We believe this tool can provide similar positive outcomes with the State's Medicaid MCO and I/T/Us in Kansas.

Thank you in advance for your consideration and if the National Indian Health Board can be of assistance, please feel free to contact NIHB's Legislative Director Jennifer Cooper at (202) 507-4076 or jcooper@nihb.org.

Sincerely,



Cathy Abramson
Chairperson, National Indian Health Board

