



Tribal Technical Advisory Group



To the Centers for Medicare & Medicaid Services

c/o National Indian Health Board 910 Pennsylvania Avenue, SE Washington, DC 20003 (202) 507-4070 (202) 507-4071 fax

Submitted via email: Victoria.wachino1@cms.hhs.gov

August 22, 2016

Victoria Wachino
Acting Deputy Administrator and Director
Center for Medicaid and CHIP Services
Centers for Medicare & Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

RE: Draft Tribal Standard Terms and Conditions

Dear Ms. Wachino,

In response to our meeting with Mr. Eliot Fishman during the February 25, 2016 Centers for Medicare and Medicaid Services (CMS) Tribal Technical Advisory Group (TTAG) meeting, attached is the final version of the Tribal Standard Terms and Conditions. The draft Tribal Standard Terms and Conditions was approved by the CMS TTAG during our July 27, 2016 meeting to submit to CMS.

As you are aware, the Centers for Medicare and Medicaid Services (CMS) has a duty to implement the Medicaid program in a manner consistent with the federal trust responsibility to provide health care services to American Indians and Alaska Natives (AI/ANs) at no cost to them. In doing so, CMS should only approve State demonstrations and waivers that are consistent with the rights and protections afforded AI/AN Medicaid enrollees and Indian Health Care Providers (IHCPs) in the Social Security Act and Indian Health Care Improvement Act.

The Centers for Medicare and Medicaid Services (CMS) Tribal Technical Advisory Group (TTAG) has developed the attached guidance of Standard Terms and Conditions to ensure these protections are maintained in any demonstration or waiver.

We look forward to CMS approving this document so as to standardize the terms and conditions for American Indians and Alaska Natives (AI/AN's). If you should have any questions or concerns, please feel free to contact Melissa Gower at 918-207-2043.

Melissa Gower
Senior Advisor, Policy Analyst
Chickasaw Nation Department of Health
Work Cell: 918-207-2043

Sincerely,

Handwritten signature of W. Ron Allen in black ink.

Tribal Chairman and CEO Jamestown S’Klallam Tribe
Chairman, Tribal Technical Advisory Group

Attachments:

1. TTAG Tribal Standard Terms and Conditions - Final

Cc: Kitty Marx, Director, CMS Division of Tribal Affairs

Tribal Technical Advisory Group Tribal Standard Terms and Conditions

CMS has a duty to implement the Medicaid program in a manner consistent with the federal trust responsibility to provide health care services to American Indians and Alaska Natives (AI/ANs) at no cost to them. In doing so, CMS should only approve State demonstrations and waivers that are consistent with the rights and protections afforded AI/AN Medicaid enrollees and Indian Health Care Providers (IHCPs) in the Social Security Act and Indian Health Care Improvement Act. The Tribal Technical Advisory Group (TTAG) has developed the following list of Standard Terms and Conditions (STCs) to ensure these protections are maintained in any demonstration or waiver.

TRIBAL CONSULTATION

Tribal Consultation. States must comply with the CMS Tribal Consultation Policy dated December 10, 2015.

EXCLUSION FROM/OPT-IN/OPT-OUT OF MANAGED CARE

Indian Individuals. Individuals identified as Indian are excluded from this demonstration unless an individual chooses to opt into the demonstration and access coverage pursuant to all the terms and conditions of this demonstration. Individuals who are Indian and who have not opted into this demonstration will receive the Medicaid services generally available to them through a fee-for-service (FFS) system under the State plan.

Flexible Enrollment. Indians will be able to switch enrollment between fee-for-service and managed care plans at any time. However, a member may only change from one managed care plan to another once per year.

FREEDOM OF CHOICE/ACCESS TO IHCP

Indians. Indians will be able to access covered benefits through the IHCP of their choice, regardless of whether the IHCP is a participating or non-participating provider.

No Auto-Assignment for Indians. Auto-assignment will not apply to Indians, and they will be eligible to select an IHCP as their primary care provider whether they opt into this demonstration or not.

Notices. Any notice regarding enrollment in a plan under this demonstration must include information explaining that Indians are excluded from the demonstration unless they opt-in and that Indians who have not opted in may still receive services through a FFS system, with access to covered benefits through Indian Health Service/Tribal/Urban (I/T/U) facilities.

COST SHARING PROTECTIONS

Indians. Indians who receive services directly by an I/T/U or through referral under Purchased/Referred Care services shall not be imposed any enrollment fee, premium, or similar charge, and no deduction, copayment, cost sharing or similar charges, and payments to an I/T/U or a health care provider through referral under Purchased/Referred Care services for services provided to an eligible Indian shall not be reduced by the amount of any enrollment fee, premium, or similar charge, and no deduction, copayment, cost sharing or similar charges.

RIGHT OF RECOVERY

IHCP Right of Recovery. Notwithstanding any other provision in this waiver, under Section 206 of the Indian Health Care Improvement Act (IHCIA), IHCPs are entitled to payment notwithstanding network restrictions.

NETWORK ADEQUACY

IHCP Network Adequacy. Any contract between the State and a managed care entity under this demonstration must require that, as a condition of receiving payment under such contract, the entity must guarantee that any IHCP in the geographic area served by the managed care entity will be entitled to participate in the entity's network in order to ensure timely access to Medicaid services for Indian enrollees entitled to receive IHS-funded services and Medicaid managed care services.

PROMPT PAYMENT REQUIREMENT

Prompt Payment to I/T/U Providers. Any contract between the State and a managed care entity under this demonstration must require that as a condition of receiving payment under such contract, the managed care entity agree to make prompt payment to IHCPs, whether such IHCPs are participating providers or nonparticipating providers.

PAYMENT RATE TO IHCPs

Payment by Managed Care Plan (MCP) Directly to IHCP. The managed care entity must pay directly to the IHCP the full encounter rate published annually in the federal register or the rate specified in the Medicaid state plan.

Payment by State Directly to IHCP. The IHCP can elect to receive the full encounter rate published annually in the federal register or the rate specified in the Medicaid state plan directly by the State, rather than the MCP for Indian patients who have opted into the MCP.

Payment rate to I/T/U Providers. Contracts with managed care entities under this demonstration may require the managed care entity to pay IHCPs at the applicable encounter rate published annually in the Federal Register by the Indian Health Service (IHS) directly to the IHCP. If the contracts do not require managed care entities to pay the applicable encounter rate directly to the IHCP, the state plan must provide for payment to the IHCP, whether the provider is a participating or non-participating provider, the difference between the applicable encounter

rate published annually in the Federal Register by the IHS and the amount paid by the managed care entity to the IHCP for such services.

Mandatory and Optional Benefits. Notwithstanding any other provision in this demonstration, the State may reimburse tribal health programs for all Mandatory and Optional benefits in the State plan.

ACCESS TO OUT OF STATE IHCPs

Access to out of state IHCPs. A managed care entity must allow Indian enrollees to access out-of-state IHCPs where timely access to covered services cannot be ensured because there are few or no IHCPs in the State.

PRIOR AUTHORIZATION AND REFERRALS

IHCP Prior Authorization. Services provided within IHCPs are not subject to prior authorization requirements.

Non-participating IHCP Referral. Managed care entities must permit nonparticipating IHCPs to refer an Indian to a network provider without having to obtain prior authorization or a referral from a participating provider.

IHCP Network Referral. Managed care entities must permit IHCPs to refer an Indian to any provider within the IHCP PRC network, even if the provider is not a member of the managed care entities network, without having to obtain prior authorization or a referral from a participating provider.

OFFER TO CONTRACT/INDIAN ADDENDUM

Offer of Contract with Indian Addendum. Contracts with managed care entities under this demonstration shall require such entities to offer to enter into participating provider agreements with all IHCPs in the area they serve using the CMS Model IHCP Contract Addendum.

EXEMPTION OF RESOURCES FROM ELIGIBILITY DETERMINATIONS

Exemption of Certain Property from Resources for Medicaid and CHIP Eligibility and Medicaid Estate Recovery. Notwithstanding any other provision in this waiver, the State shall disregard the property listed in 42 U.S.C. 1396a(ff) from resources for the purposes of determining the eligibility of an individual who is an Indian for medical assistance under this demonstration and such property shall not be counted for the purposes of determining the amount a patient owes for Medicaid estate recovery.

TRIBAL TECHNICAL ADVISORY BOARDS

Tribal Technical Advisory Board. The state will solicit advice and guidance from a tribal technical advisory board on at least a quarterly basis to ensure that Indians receive quality care

and access to services. The Tribes will appoint representatives to serve as members on this advisory board.

DEFINITIONS

Indian. “Indian” means any individual defined at 25 USC 1603(13), 1603(28), or 1679(a), or who has been determined eligible as an Indian, under 42 CFR 136.12.

Indian Health Care Provider. “Indian Health Care Provider (IHCP),” means a health care program operated by the Indian Health Service (IHS) or by an Indian Tribe, Tribal Organization, or Urban Indian Organization (otherwise known as an I/T/U) as those terms are defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).