

Tribal Health Reform Resource Center

A project of the
National Indian Health Board



“Staying Vigilant: The Affordable Care Act Implementation and Health Care in Indian Country”

Congress is considering major changes to the Affordable Care Act that will revolutionize the American healthcare system. The legislation – known as the American Health Care Act (AHCA) – passed the U.S. House of Representatives on May 4, 2017 and is being considered by the full Senate at the time of this writing. The legislative language contained in this resulting bill calls for significant changes to the health insurance markets, health insurance subsidies, penalties and the Medicaid program. The AHCA proposes Medicaid per capita caps, shortens enrollment periods into health care insurance, and implementation of a series of age-based tax credits for securing coverage; a great departure from models seen under the ACA.

In response to the AHCA proposal, the National Indian Health Board (NIHB) and National Congress of American Indians (NCAI) issued a joint letter to Majority Speaker of the House, Paul Ryan, outlining several priorities for Tribal communities. These include:

- Preserve Medicaid Expansion for all Americans and especially for individuals receiving Medicaid through an Indian Health Service (IHS) or Tribally operated health facility
- Clarify that AI/ANs should not be subject to state-imposed work requirements under the Medicaid program
- Continue the cost sharing protections for AI/ANs contained in section 1402(d) of the Affordable Care Act

You can see a side by side comparison of the ACA and the AHCA impacts on Indian Country, NIHB has a guide here: <http://files.constantcontact.com/a3c45cb9201/88eb8955-e7dd-48a4-b3db-53f6471537a6.pdf>

However, for the time being the Affordable Care Act is still the law of the land. If Congress fails to pass the AHCA there are several paths that the Administration has taken and could take to erode the ACA outside of the legislative environment. Two such examples are the Market Stabilization rule and a letter issued by the Department of Health and Human Services (HHS) Secretary Tom Price and Centers for Medicare and Medicaid Services (CMS) Administrator Seema Verma sent recently to state governors.

Centers for Medicare and Medicaid Marketplace Stabilization Rule:

The ACA Market Stabilization rule was announced by CMS on February 17, 2017 and was published in the federal register on April 18, 2017. This rule seeks to “help lower premiums and stabilize individual and small group markets and increase choices for Americans.” To achieve these priorities, one element the rule calls for is the shortening of the open enrollment period in the health insurance marketplace to “align closer with Medicare and the private market, with the hope of encouraging individuals to enroll in coverage prior to the beginning of the year.” Monthly American Indian and Alaska Native (AI/AN) enrollments will be permitted to continue

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under this final rule as established through the ACA. It must be noted that with such regulatory changes, there are some Tribal concerns, when this proposed rule moved forward without Tribal consultation. NIHB released official comments to the then Acting Administrator Patrick Conway expressing such concerns and calling for future Tribal consultation.

Secretary Price and Administrator Verma Governors' Letter:

HHS Secretary Tom Price and CMS Administrator Seema Verma Released a letter to state governors March 14, 2017. This letter outlined several priorities of the new Administration with regards to Medicaid. It discusses “a new era for federal and state Medicaid partnership” focused on giving “states more freedom to design programs” and encouraging “innovative solutions” with regards to their Medicaid populations. Innovative programs could have a variety of designs, depending on the State, but as outlined in the letter innovative programs would ideally target mitigating state and federal costs and incorporate approaches to increase employment and community engagement of adult beneficiaries.

Secretary Price and Administrator Verma also indicated that there will be “fast-tracking” approval of waiver and demonstration project extensions with regards to state Medicaid programs. Some states are considering a 1332 waiver in addition to already existing Medicaid waivers. This “fast-tracking” process raises some concerns at the Tribal level. Section 1332 of the ACA requires that states with one or more federally recognized Tribe engage in meaningful consultation with Tribes as a part of the notice and comment process.

It is important that states continue to engage in meaningful consultation with Tribes. Tribes should proactively reach out to your state Medicaid programs to share Tribal Medicaid priorities. Through CMS’s Tribal Consultation Policy, Tribes can request Tribal consultation at any time with a state on a proposal that would significantly impact Tribes. Tribes should stay vigilant on proposed waivers and make sure states are consulting with them prior to the submission of any new proposal.

It is part of the National Indian Health Board’s (NIHB) mission to educate the Administration and Congress about the trust responsibilities the federal government holds with federally recognized Tribes to provide health, education, and other services. The National Indian Health Board encourages Indian country to stay vigilant, monitor the pending changes to health care delivery, and continue to educate those who would seek to reform Tribal health care.

To read the marketplace stabilization rule or the Secretary Price and Administrator Verma letter in their original form you can go to:

Marketplace Stabilization Rule:

<https://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2017-Press-releases-items/2017-04-13-2.html>

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Secretary Price and Administrator Verma Letter:

<https://www.hhs.gov/sites/default/files/sec-price-admin-verma-ltr.pdf>