

National Indian Health Board



Submitted electronically via www.Medicaid.gov

January 18, 2019

Administrator Seema Verma
Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Ave SW
Washington, DC 20101

RE: Comments on the State of Oklahoma's request to amend the state's Section 1115(a) "SoonerCare" Choice program

Dear Administrator Verma:

On behalf of the National Indian Health Board (NIHB)¹ and the 573 federally recognized Tribal Nations that we serve, I am writing to submit comments to the Centers for Medicare and Medicaid Services (CMS) in favor of Oklahoma's request to amend the state's Section 1115(a) "SoonerCare" Choice program, Project Number 11-W00297/3 ("SoonerCare").² As amended, SoonerCare would create an exemption from mandatory Medicaid work and community engagement requirements for American Indians and Alaska Natives (AI/ANs).³ Medicaid is a critical resource to the communities that we represent, with more than one in four (27%) nonelderly AI/AN adults and half of AI/AN children enrolled.⁴

NIHB stands in support of the Tribes in Oklahoma that worked with the state to request an exemption from community engagement requirements.⁵ In submitting our letter of support, we remind you that AI/ANs are among the nation's most vulnerable populations and that Medicaid plays a critically important role in extending valuable resources to the chronically underfunded

¹ Established in 1972, NIHB is an inter-Tribal organization that advocates on behalf of Tribal governments for the provision of quality health care to all American Indians and Alaska Natives (AI/AN). The 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. In areas where there is no Area Health Board, Tribal governments choose a representative who communicates policy information and concerns of the Tribes in that area with the NIHB. Whether Tribes operate their entire health care program through contracts or compacts with IHS under Public Law 93-68, the Indian Self-Determination and Education Assistance Act (ISDEAA), or continue to also rely on IHS for delivery of some, or even most, of their health care, the NIHB is their advocate.

² Oklahoma Health Care Authority, *SoonerCare 1115(a) Research and Demonstration Waiver Amendment Request* Project Number: 11-W00297/3 (Dec. 7, 2018), <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ok/ok-soonercare-pa6.pdf>.

³ See *id.* (Section 6. Persons Exempt from Community Engagement. "Other state exemptions include . . . American Indians and Alaska Natives").

⁴ Kaiser Family Foundation, *Medicaid and American Indians and Alaska Natives* (Sept. 7, 2017), <https://www.kff.org/medicaid/issue-brief/medicaid-and-american-indians-and-alaska-natives/>.

⁵ See Attachments 1 and 2.

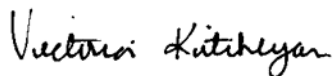
Indian health system which serves IHS beneficiaries. This is especially true in states like Oklahoma, where the AI/AN population is highly concentrated. Subjecting AI/AN eligibility for Medicaid to the imposition of mandatory work and community engagement requirements, as other states have done, would only exacerbate the challenges AI/ANs already face in achieving adequate medical coverage. CMS must therefore grant the Oklahoma SoonerCare amendment to ensure that work and community engagement requirements do not compromise Medicaid access for AI/ANs in the future.

Medicaid is one of the major programs the government provides access to pursuant to its trust obligation to AI/ANs. Congress has declared that “it is the policy of [the U.S.], in fulfillment of its special trust responsibilities and legal obligations to Indians . . . to ensure the highest possible health status for Indians and urban Indians and to provide *all resources necessary* to effect that policy; [and to render health care services] more responsive to the needs and desires of Indian communities.”⁶ HHS and CMS have a legal responsibility to advance these objectives when administering the federal healthcare programs they oversee, for all Tribal members. This trust responsibility and the federal laws designed to implement it not only permit CMS to treat those served by the Indian health system as unique Medicaid enrollees entitled to special accommodation and treatment, they *require* it.

Approval of the Oklahoma SoonerCare amendment is consistent with the United States’ trust responsibilities and treaty obligations to Tribal nations. Even the United States Commission on Civil Rights recommends that AI/ANs be exempt from work requirements “due to their sovereign status and trust relationship with the federal government.”⁷

We are grateful for the opportunity to provide comments and recommendations and look forward to further engagement. Please contact NIHB’s Director of Policy, Devin Delrow, at ddelrow@nihb.org or 202-507-4072 for any follow-up inquiries.

Sincerely,



Victoria Kitcheyan, Acting Chairperson National Indian Health Board

Attachments:

1. Choctaw Nation’s Comments on Oklahoma SoonerCare Community Engagement Amendment
2. Chickasaw Nation’s Comments on Oklahoma SoonerCare Community Engagement Amendment

⁶ 25 U.S.C. § 1602(a)(1), (3) (emphasis added).

⁷ U.S. Commission on Civil Rights, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans* 92 (Dec. 2018) (“ACA already exempts IHS-eligible Native Americans from paying a fee for declining health coverage, and does not charge Medicaid-eligible beneficiaries enrollment fees, copayments, coinsurance, or deductibles.”).

Attachment 1



Choctaw Nation of Oklahoma

P.O. Box 1210 • Durant, OK 74702-1210 • (580) 924-8280

Gary Batton
Chief

Jack Austin, Jr.
Assistant Chief

January 16, 2019

Administrator Seema Verma
Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Re: Oklahoma SoonerCare Community Engagement Amendment

Dear Administrator Verma:

On behalf of the Choctaw Nation of Oklahoma, I am pleased to offer comments in response to the Oklahoma SoonerCare Community Engagement Amendment submitted by the State of Oklahoma to CMS on December 7, 2018.

The Choctaw Nation has a very collaborative and productive relationship with the State of Oklahoma, including support for our Tribal health care system.

The federal government has a trust responsibility to provide healthcare to our citizens and interacts with the Choctaw Nation on a government-to-government basis. The Medicaid program is a critical tool in assisting the federal government in fulfilling its obligations to American Indians/Alaska Natives (AI/AN); however, even considering all appropriations to Indian Health Service (IHS), Medicare, and Medicaid resources, the Indian health system is still only funded at less than 50% level of need on average. Choctaw Nation is even funded at 38%, a significantly lower level of need per active patient.¹

While we fully support full employment for our people, the incentives for community engagement tied to Medicaid benefits do not result in the same outcomes in Indian health care. Because AI/AN have international agreements that provide the basis for the federal Indian health system, they have access to IHS and Tribally operated facilities at no cost, whether they remain eligible for Medicaid or not. To apply such requirements to Indian health, therefore, simply results in a cost-shift from Medicaid to IHS – which is far from being fully funded.

¹ [Indian Health Care Improvement Fund Reports, 2018](#)

Attachment 1

The State of Oklahoma has recognized the federal trust responsibility to AI/AN, and properly included an exemption for AI/AN contained in Section 6 of the amendment, which reads:

Section 6. Persons Exempt from Community Engagement

Members or new applicants meeting one or more of the below listed exemptions will not be required to complete CE related activities during any month(s) in which the exemption applies to maintain continued eligibility.

12. Other state exemptions include:

- a. Members enrolled in the OHCA family planning program under the state plan (SoonerPlan); and
- b. Members in the OHCA Breast and Cervical Cancer Program (Oklahoma Cares); and
- c. Oklahoma foster care parents; and former foster care members; and
- d. American Indians and Alaska Natives.**

The Choctaw Nation fully supports the State's inclusion of this exemption. Again, thank you for the opportunity to provide comments on the Oklahoma SoonerCare Community Engagement Amendment. The Nation is committed to ensuring the highest quality of health care for our citizenry and we support the State of Oklahoma and CMS in their endeavors to do the same.

Should you have any questions, please contact Teresa Jackson, Senior Executive Officer of Tribal Services, (580) 924-8280, extension 2264, or by email, tjackson@choctawnation.com.

Sincerely,



Gary Batton, Chief
Choctaw Nation of Oklahoma

cc: Kitty Marx, Director, Division of Tribal Affairs



OFFICE OF THE GOVERNOR

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BILL ANOATUBBY
GOVERNOR

January 15, 2019

Ms. Seema Verma, Administrator
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Administrator Verma:

On behalf of the Chickasaw Nation, we are pleased to offer comments in response to the Oklahoma SoonerCare Community Engagement Amendment submitted by the State of Oklahoma. The Chickasaw Nation has a great working relationship with the Oklahoma state government, including support for our tribal health care system.

The federal government has a trust responsibility to provide healthcare to our citizens and, because of that trust responsibility, we fully support the state's exemption for American Indians/Alaska Natives contained in Section 6 of the amendment, which reads:

Section 6. Persons Exempt from Community Engagement

Members or new applicants meeting one or more of the below listed exemptions will not be required to complete Community Engagement related activities during any month(s) in which the exemption applies to maintain continued eligibility.

12. Other state exemptions include:

- a. Members enrolled in the Oklahoma Health Care Authority (OHCA) family planning program under the state plan (SoonerPlan); and
- b. Members in the OHCA Breast and Cervical Cancer Program (Oklahoma Cares); and
- c. Oklahoma foster care parents; and former foster care members; and
- d. American Indians and Alaska Natives.**

Attachment 2

Ms. Seema Verma

2

January 15, 2019

Thank you for the opportunity to provide comments on the Oklahoma SoonerCare Community Engagement Amendment. The Chickasaw Nation is committed to ensuring the highest quality of health care for our citizenry and we support the state of Oklahoma and the Centers for Medicare and Medicaid Services in their endeavors to do the same.

If you have any questions, please contact Dr. Judy Goforth Parker, commissioner of health policy, at (580) 421-4582 or at judy.parker@chickasaw.net.

Sincerely,

A handwritten signature in black ink that reads "Bill Anoatubby". The signature is written in a cursive, flowing style.

Bill Anoatubby, Governor
The Chickasaw Nation

BJA:sms

cc: Ms. Kitty Marx