

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

July 26, 2021

The Honorable Chiquita Brooks-LaSure,
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
P.O. Box 8013
Baltimore, MD 21244–1850

Re: **Massachusetts Section 1115 Demonstration Project**

Dear Administrator Brooks-LaSure:

On behalf of the Centers for Medicare and Medicaid Services (CMS) Tribal Technical Advisory Group (TTAG), I write to you regarding Massachusetts's recent Section 1115 waiver. We are particularly interested in their attempt to permanently authorize the flexibilities around the ability to offer "clinic services" outside of the clinic facility, which they obtained in their Section 1135 waiver. While we support Massachusetts's efforts to expand access to health care, we believe that this waiver is not necessary for the goals that they are attempting to achieve. As we have outlined in our prior communications, we do not believe that the place of service restrictions in the Medicaid "clinic benefit" statute are as severe as CMS's interpretation. **The TTAG encourages CMS to approve Massachusetts's waiver, while re-examining their interpretation of the "clinic benefit" statute.**

Interpretation of the Medicaid "Clinic" Benefit

On July 16, 2021, the TTAG submitted a letter to CMS leadership voicing our concern with the agency's 2016 interpretation of the Medicaid "clinic benefit."¹ Prior to CMS's advisement of this interpretation in 2016, State Medicaid programs had a long history of paying Tribal clinics for all their offsite services, which are vitally important throughout Indian Country and especially for isolated communities that have no clinic of their own and rely on the services of visiting health care providers.

Since 2016, CMS, the States, and Indian health providers have been hard at work trying to find practicable workarounds to avoid the serious and deleterious consequences of that interpretation. But as we have advised several times, CMS's proposed solution—redesignating Tribal clinics as FQHCs—although well-intentioned, has proved costly, time-consuming, overly complicated and impracticable for many States and Indian health providers. Moreover, several States will be unable to implement the solution

¹ The letter is available here: <https://www.nihb.org/tribalhealthreform/wp-content/uploads/2021/07/TTAG-letter-to-CMS-re.-Medicaid-clinic-services.pdf>

before CMS's deadline for doing so: October 31, 2021, just over three months from now.

We strongly encourage CMS to expand its interpretation of the “clinic services” benefit to include all offsite services. CMS has the authority to reinterpret the Medicaid “clinic” benefit without any amendment to the relevant statute or regulation so that it covers services that are furnished outside a clinic’s “four walls” to all eligible Medicaid beneficiaries, not just to those who are homeless. It should do so before October 31, 2021, when its four-walls enforcement grace period is set to expire.

Support For the Massachusetts Waiver’s Attempts to Expand Access To Care

On June 8, 2021, the Secretary of the Executive Office of Health and Human Services for the Commonwealth of Massachusetts, submitted to CMS a request to amend the Massachusetts Section 1115 Demonstration Project (1 I -W-00030/1), specifically in part, to continue and expand upon place-of-service flexibilities implemented during the COVID-19 public health emergency, including the hospital-at-home program and a waiver of outreach limits for clinic services.

While we do not believe that such a waiver should be necessary for Massachusetts’s Medicaid program to cover these services, the CMS TTAG supports the Massachusetts’s Health and Human Services request to expand the flexibilities related to place of service.

Conclusion

The CMS TTAG strongly encourages CMS’s support for the Massachusetts waiver’s attempts to expand access to care and to examine the CMS 2016 interpretation of the Medicaid “clinic” benefit. We believe that a careful re-examination of their interpretation of the statute will lead CMS to believe that such a waiver is not necessary to cover services provided outside of the clinic facility.

Sincerely,



W. Ron Allen, CMS/TTAG Chair
Jamestown S’Klallam Tribe, Chairman/CEO