HOBBS STRAUS DEAN & WALKER

CMS FAQ: Background

- In February 2016, CMS issued SHO Letter expanding 100% FMAP policy.
- In implementing the SHO Letter, CMS realized some IHS/tribal facilities have been billing Medicaid for clinic services provided outside the “four walls” of their facilities.
- On January 18, 2016, CMS issued an FAQ addressing Medicaid reimbursement for clinic services provided outside the four walls.
- The FAQ formalizes its interpretation that IHS/tribal facilities may not bill Medicaid for “clinic services” provided outside their four walls.

Who does the rule apply to?

- Under the policy, IHS/tribal facilities enrolled as clinics may not bill Medicaid for “clinic services” provided outside the four walls of their facilities

- The rule does not apply to:
  - Clinic services provided within the four walls of a facility;
  - Clinic services provided outside the four walls to homeless persons;
  - Tribal hospital-based services;
  - Services provided by outside providers billed as an assigned claim.

Where does CMS's Policy Come From?

- Section 1905(a)(9) of the Social Security Act provides Medicaid coverage for:

  clinic services furnished under the direction of a physician, without regard to whether the clinic itself is administered by a physician, including such services furnished outside the clinic by clinic personnel to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address

- Regulations at 42 C.F.R. 440.90 provide:

  Clinic services means … services that are furnished by a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. The term includes …: (a) Services furnished at the clinic …; and (b) Services furnished outside the clinic, by clinic personnel under the direction of a physician, to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address

CMS's proposed solution

- CMS's FAQ suggests that tribal facilities enrolled in Medicaid as clinics should re-enroll as FQHCs
- FQHCs are not subject to the "four walls" limitation
- The FAQ says that under section 1905(*l*)(2)(B) of the Social Security Act, tribal outpatient health programs are by definition FQHCs
  - FQHCs for purposes of Medicaid do not generally have to meet requirements to enroll as a Medicare FQHC
  - This is different from being an FQHC in the Medicare program; receipt of grants under section 330 of the Public Health Service Act; or designation as a "look alike" by HRSA

Billing at the OMB Rate

- The FAQ notes that FQHCs are generally paid based on the Prospective Payment System (PPS) rather than at the OMB rate.
- The FAQ states that States may use an Alternative Payment Methodology (APM) that establishes that tribal FQHCs may bill at the OMB rate instead of the PPS rate
- The state would need to amend its state plan to allow tribal FQHCs to bill at the OMB rate through an APM.

CMS's Grace Period

- Recognizing that it may take time to transition to being enrolled in Medicaid as an FQHC and being reimbursed under the state plan at the OMB rate, the FAQ provides a grace period
- The FAQ says CMS does not intend to review claims for clinic services furnished outside the four walls of a tribal facility before **January 30, 2021**
- CMS says, however, that tribal facilities that wish to transition to being an FQHC should notify the state of their intention within one year of the FAQ, or by **January 18, 2018**

Next Steps

1. The tribal facility should notify the state of its intention to change its Medicaid enrollment status from a provider of clinic services to an FQHC.
2. The state and the tribe will need to agree to allow the tribal FQHC to bill at the OMB rate.
3. The state will need to submit a state plan amendment to CMS to allow the tribal FQHC to bill at the OMB rate.
4. The state will need to change the tribal facility's designation in the Medicaid Management Information System (MMIS).

Health Care Reform in Indian Country

Self-Governance Communication & Education

Self-Governance Tribes Striving Towards Excellence in Health Care

Administration and Congressional ACA-Related Actions in 2017 and 2018

February 2, 2017

Presented by Doneg McDonough, Technical Advisor

Tribal Self-Governance Advisory Committee

TribalSelfGov.org; DonegMcD@outlook.com

Administration and Congressional Health Care Actions in 2017

- **Affordable Care Act**
  - **Medicaid Expansion**
  - **Marketplace provisions**
    - Premium tax credits
    - Cost-sharing protections
      - General population
      - Indian-specific protections
    - Special monthly enrollment periods
  - **Indian Health Care Improvement Act**
  - **Other Indian-specific ACA provisions**
- **Medicare**
- **Medicaid (non-Medicaid expansion)**

Net Premium Costs under Affordable Care Act

(Example of Norman, Oklahoma; 2017)

Figure A: Net Annual Household Premium Contribution for Lowest Cost Marketplace Bronze Plan; Norman, Oklahoma (2017)[1]				
	Household (HH) size:	1-person HH	2-person HH	3-person HH
	Number enrolled:	1 enrollee	2 enrollees	3 enrollees
	FPL			
Medicaid or nothing	0% - 100%	$0 or $4,185	$0 or $8,370	$0 or $12,556
Medicaid or PTC	101% - 138%	$0	$0	$0
Premium Tax Credit (PTC) eligible	139%	$0	$0	$0
	150%	$0	$0	$0
	175%	$0	$0	$0
	200%	$0	$0	$0
	225%	$223	$0	$0
	250%	$704	$0	$0
	300%	$1,720	$1,189	$659
	350%	$2,295	$1,965	$1,635
	400%	$2,871	$2,741	$2,612
No PTCs	Over 400% or other non-PTC eligible	$4,185	$8,370	$12,556

[1] Blue Advantage Bronze PPO 105 (BCBS of Oklahoma) for 40 year-old non-smoker enrollees.

See TribalSelfGov.org: http://www.tribalselfgov.org/wp-content/uploads/2017/01/TSGAC-Memo-Net-Marketplace-Premium-Costs-Hold-or-Lower-in-2017-2017-01-1....pdf

Nationally, Uninsured Rate of American Indians and Alaska Natives Down 30% Since 2010

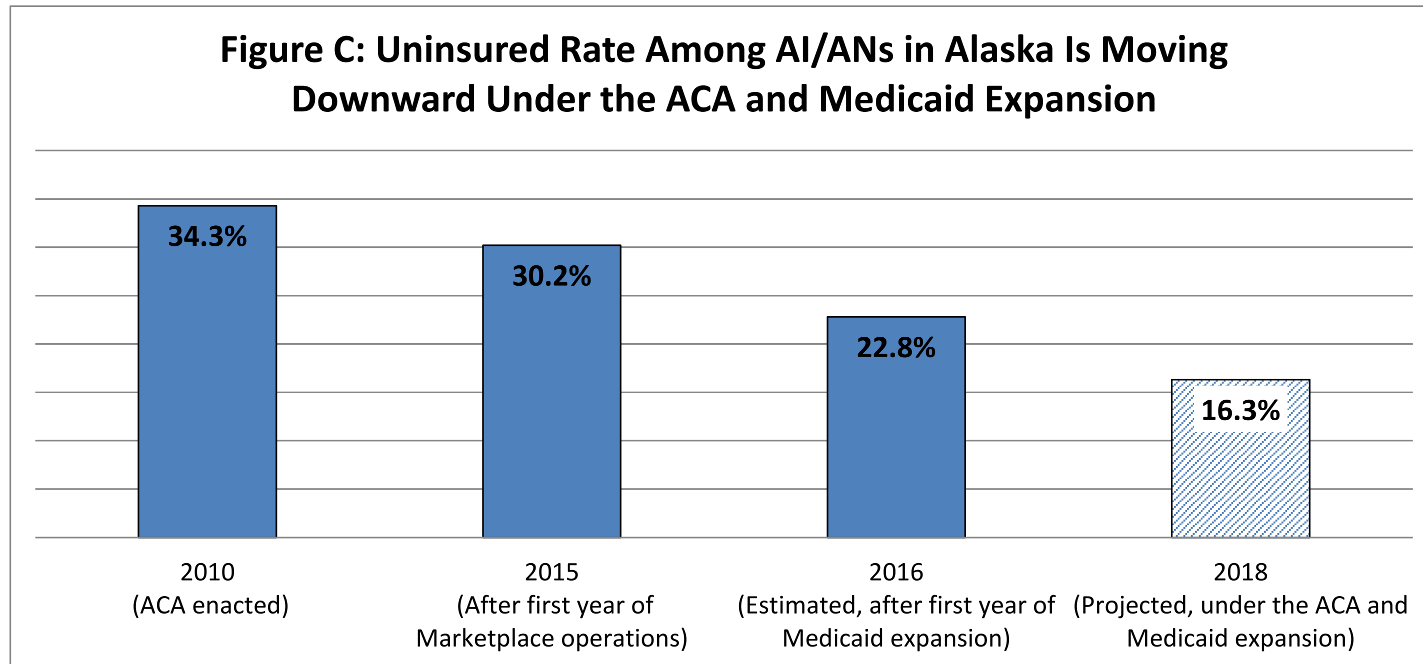
Rate decreased 8.5 percentage points, from 24.2% (2010) to 15.7% (2015)

Figure B: Uninsured Rate of AI/ANs Reduced by 30% Despite Almost Half of States with Indian Tribes Not Expanding Medicaid

	2010	2011	2012	2013	2014	2015
Insured	75.8%	77.0%	77.4%	78.4%	81.8%	84.3%
Uninsured	24.2%	23.0%	22.6%	21.6%	18.2%	15.7%

- Source: U.S. Census Bureau, 2010-2015 American Community Survey, 1-Year Estimates, includes self-identified American Indians and Alaska Natives ("alone or in combination").

Impact of Medicaid Expansion and Affordable Care Act on Insurance Status of AI/AN in Alaska



- Medicaid expansion implemented in September 2015.
- More than 27,000 individuals enrolled in the program as of December 2016, with more than 10,000 of these enrollees estimated to be AI/ANs.
- $316 million in federal funds has been paid out for health care services over the initial 16 months of the Medicaid expansion, an average of $7.5 million per month.
- Of this total, $119 million is estimated to have been expended serving AI/ANs, with $47 million projected to have been paid to Tribal health organizations for services to AI/ANs.

Source: Alaska Department of Health and Social Services, “Medicaid in Alaska Dashboard”.

Potential Action on Major Health Care Legislation in 2017				
Recent Legislative Vehicle	**Program**	**Elements**	**Status**	**Vehicle / Process, if repealed**
Affordable Care Act	**Medicaid Expansion**	**- All households 0% - 138% federal poverty level**	At risk of defunding	Reconciliation; 50+ votes
Affordable Care Act	**ACA Marketplace provisions**	**- Premium tax credits** **- Cost-sharing protections** **- General population** **- Indian-specific protections** - Monthly special enrollment periods - Full payment to I/T/Us (no reductions for patient co-payments)	At risk of eliminating and replacing with lower assistance levels	Reconciliation; 50+ votes
Affordable Care Act	**Indian Health Care Improvement Reauthorization and Extension Act of 2009**	- Permanent reauthorization of IHCIA - Established authority for continuum of care through integrated behavioral health programs - Authority for I/T/U health providers to be licensed in any state and practice at an I/T/U facility - Authorizes IHS and Tribes to enter into arrangements with VA and DoD to share medical facilities - Allows I/T/U providers to be eligible for participation in any federal healthcare program and for reimbursement from 3rd party payers - Other provisions	Low risk	Regular legislation; 60+ votes
Affordable Care Act	**Other Indian-specific provisions**	**- Section 9021 Exclusion of Health Benefits Provided by Indian Tribal Governments as Taxable Income** **- Section 2902 Elimination of Sunset for Reimbursement for all Medicare Part B Services Furnished by Certain Indian Hospitals and Clinics** - Section 2901(b) Payor of Last Resort - Section 2901(c) Facilitating Enrollment of Indians under the Express Lane Option	At risk (provisions in red)	- For Sec. 9021 and Sec. 2902: Reconciliation; 50+ votes - Other provisions: likely require 60+ votes
Various (Social Security Act)	**Medicare**	- All	Low risk. Potential "voucher", with limits on annual growth	Reconciliation; 50+ votes
Various (Social Security Act)	**Medicaid (non-Medicaid expansion)**	**- Entitlement for health care services for certain low-income persons** **- Preserve 100 percent federal reimbursement rate (i.e., 100% FMAP) for Medicaid services provided to American Indians and Alaska Natives that are received through the Indian health system.**	At risk from potential block grants	Reconciliation; 50+ votes

Comparison of ACA to Representative Price's Plan

-- Example of two 40-year-old adults; two 20-year-old kids

Comparison of Federal Financial Assistance for Health Insurance Costs (Individual Market): Affordable Care Act (ACA) vs. Rep. Price Plan[1]						
Example of 4-Person AI/AN Family in Norman, OK (Cleveland County); 2017						
Two 40-year-olds; two 20-year-olds; all meet ACA definition of Indian						
	Household Income	Total Plan Premium[2]	Average Out-of-Pocket (OOP) Costs[3]	Premium Tax Credit (PTC)[4, 5]	Net Premium Costs	Net Total Costs
ACA (Current)	$25,000 (103% FPL)	$12,529	$0	$12,529	$0	$0
Rep. Price Plan			$5,241	$6,752	$5,777	$11,018
DIFFERENCE: Rep. Price plan vs. ACA:					$5,777	$11,018
ACA (Current)	$50,000 (206% FPL)	$12,529	$0	$12,529	$0	$0
Rep. Price Plan			$5,241	$6,752	$5,777	$11,018
DIFFERENCE: Rep. Price plan vs. ACA:					$5,777	$11,018
ACA (Current)	$75,000 (309% FPL)	$12,529	$0	$10,453	$2,076	$2,076
Rep. Price Plan			$5,241	$6,752	$5,777	$11,018
DIFFERENCE: Rep. Price plan vs. ACA:					$3,701	$8,942
ACA (Current)	$150,000 (617% FPL)	$12,529	$0	$0	$12,529	$12,529
Rep. Price Plan			$5,241	$6,752	$5,777	$11,018
DIFFERENCE: Rep. Price plan vs. ACA:					-$6,752	-$1,511

See notes on following page.

Comparison of ACA to Representative Price's Plan
(analysis notes)

[1] Rep. Price plan is the Empowering Patients First Act, introduced in May 2015 (H.R. 2300).

[2] Premium is for the lowest-cost bronze PPO (Blue Advantage Bronze PPO 105) on the Marketplace in 2017, with all four family members enrolling in the plan. The plan has an annual deductible of $6,800 per individual/$14,300 per family and an OOP maximum of $7,150 per individual/$14,300 per family.

[3] ACA eliminates cost-sharing for Marketplace enrollees who meet the definition of Indian. Average OOP costs for Rep. Price plan are based on average cost-sharing payments made to providers by the federal government on behalf of AI/AN Marketplace enrollees in Oklahoma.

[4] The PTCs shown for ACA are generated by HealthCare.gov and capped at the amount of the total plan premium. Additional PTCs might be available under ACA for a higher-cost plan.

[5] The PTCs shown for Rep. Price Plan include an adjustment to the initial proposed amounts (for 2016) to account for inflation, as indicated by H.R. 2300. Rep. Price plan also makes available a one-time tax credit of up to $1,000 for individuals who qualify for a tax deduction for payments made (or payments made on their behalf) to a health savings account (HSA).

Comparison of ACA to Representative Price's Plan

-- Example of two 60-year-old adults; two 20-year-old kids

Comparison of Federal Financial Assistance for Health Insurance Costs (Individual Market): Affordable Care Act (ACA) vs. Rep. Price Plan[1]						
Example of 4-Person AI/AN Family in Norman, OK (Cleveland County); 2017						
Two 60-year-olds; two 20-year-olds; all meet ACA definition of Indian						
	Household Income	Total Plan Premium[2]	Average Out-of-Pocket (OOP) Costs[3]	Premium Tax Credit (PTC)[4, 5]	Net Premium Costs	Net Total Costs
ACA (Current)	$25,000 (103% FPL)	$21,935	$0	$21,935	$0	$0
Rep. Price Plan			$5,241	$8,594	$13,341	$18,582
DIFFERENCE: Rep. Price plan vs. ACA:					$13,341	$18,582
ACA (Current)	$50,000 (206% FPL)	$21,935	$0	$21,935	$0	$0
Rep. Price Plan			$5,241	$8,594	$13,341	$18,582
DIFFERENCE: Rep. Price plan vs. ACA:					$13,341	$18,582
ACA (Current)	$75,000 (309% FPL)	$21,935	$0	$21,935	$0	$0
Rep. Price Plan			$5,241	$8,594	$13,341	$18,582
DIFFERENCE: Rep. Price plan vs. ACA:					$13,341	$18,582
ACA (Current)	$150,000 (617% FPL)	$21,935	$0	$0	$21,935	$21,935
Rep. Price Plan			$5,241	$8,594	$13,341	$18,582
DIFFERENCE: Rep. Price plan vs. ACA:					-$8,594	-$3,353

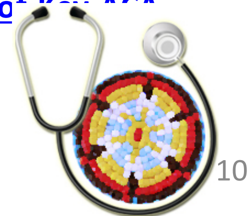
Timeline for Administration / Congressional Action

Timeline of Potential Administration and Congressional Action on ACA Repeal / Replace Legislation

Late 2016	January 2017	February 2017	March 2017	April 2017	May 2017	Spring 2017 & Beyond

- 11/8 – Election of President-Elect Trump
- 12/20 – TSGAC signs on to Tribal request to retain IHCIA
- 1/3 – Senate Republicans (1) introduce budget resolution
- 1/4 – RSC releases proposal to repeal ACA
- 1/9-1/13 – Stated dates for Senate/House to vote on (1b) budget resolution
- 1/27 – Senate/House (1c) budget reconciliation bills due
- 1/30 - 2/3 – House E & C and Ways & Means Committees to (2a) begin drafting ACA repeal legislation
- 2/20 – House Republicans seek to hold a vote on (2b) ACA repeal bill
- 2/21 – Appeal proceedings resume in a House Republican lawsuit seeking to end
- 3/16 – Federal debt limit hits cap
- 4/28 – Federal spending authority for FY 2017 under CR expires
- 5/3 – Due date for health insurers to submit premium bids for 2018 coverage
- Spring 2017 – (2c) ACA repeal legislation vote
- 2017- Late 2018 – (3) ACA replacement legislation vote
- 1/1/2019- 1/1/2020 – (4) Target effective date of ACA repeal and replacement implementation

See TribalSelfGov.org: http://www.tribalselfgov.org/wp-content/uploads/2017/01/TSGAC-Timeline-of-Key-ACA-Related-Congressional-Activities-2017-01-12b....pdf



Income Thresholds:
federal poverty levels (FPL)

Household (HH) Size / Income (2017 Marketplace)				
FPL	1-person HH	2-person HH	3-person HH	4-person HH
140%	$16,632	$22,428	$28,224	$34,020
150%	$17,820	$24,030	$30,240	$36,450
175%	$20,790	$28,035	$35,280	$42,525
200%	$23,760	$32,040	$40,320	$48,600
225%	$26,730	$36,045	$45,360	$54,675
250%	**$29,700**	$40,050	$50,400	$60,750
300%	**$35,640**	$48,060	$60,480	$72,900
350%	**$41,580**	$56,070	$70,560	$85,050
400%	**$47,520**	$64,080	$80,640	$97,200