IHS TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE

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May 24, 2017

Ms. Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
200 Independence Ave. SW
Washington D.C. 20201

RE: Medicaid Work Requirements for American Indians and Alaska Natives

Dear Administrator Verma:

On behalf of the Indian Health Service (IHS) Tribal Self-Governance Advisory Committee (TSGAC), I write to provide comments on the implementation of work requirements for American Indians and Alaska Natives (AI/ANs) enrolled in Medicaid through Section 1115 Demonstration Waivers. Tribes fully support economic development, employment training and resource opportunities, and job creation; and, we share the goal of increasing employment rates for Tribal citizens. However, there are many challenges and unique circumstances within Indian Country that would keep Medicaid work requirements from being effective or successful in achieving that goal.

Below we have outlined some of these challenges. We implore CMS and States to engage Tribes in consultation as early as possible in the development of these wavier proposals.

1. **Mandatory work requirements will place further burden on the historically underfunded IHS.** Unlike other populations within the United States, AI/ANs have established rights to the provision of health care, which has been guaranteed through numerous treaties Tribes entered into with the United States long before the country was founded. As such, AI/ANs who cannot meet mandatory work requirements may forego Medicaid coverage and rely solely on IHS for health care services, which will inevitably increase costs and further tax the already underfunded and overburdened IHS.

   Currently, IHS is only funded at approximately 60% of actual need and is severely and chronically underfunded in contrast to every other Federal health care program. For example, the Veteran's Health Administration is funded at twice the level per person than IHS. In fact, the budget for 200,000 homeless veterans is equivalent to the total funding for the more than five million eligible individuals for IHS. Thus, the implementation of mandatory work requirements will only further increase the major health disparities AI/ANs continue to face. Additionally, mandatory work requirements will increase costs for non-IHS providers who must provide uncompensated emergent services to AI/ANs who forego Medicaid coverage due to mandatory work requirements.

2. **A lack of economic opportunities hinders AI/ANs from gaining employment.** One of the largest challenges Tribes face is the lack of economic development and employment opportunities, especially those of the private-sector, available in or near

Tribal communities, many of which are located in extremely rural areas that don't have basic amenities such as running water, sewage, or electricity and have an unemployment rate over 50%. Due to this lack of available jobs, the ability for many AI/ANs to demonstrate that they are actively seeking employment to meet work requirements is very difficult, if not impossible. Furthermore, AI/ANs rely heavily on Tribal governments who, as sovereign nations, provide employment assistance programs. As a result, work requirements that allow compliance through demonstration of access to state employment programs will not address the issue.

3. **Mandatory work requirements contradict the Federal trust responsibility.** Guaranteed in numerous treaties and reaffirmed through the Indian Health Care Improvement Act (IHCIA), Congress declared it is the trust responsibility and obligation of the Federal government to ensure the provision of health care to AI/ANs and provide all necessary resources to do so. Despite this, major health disparities still persist throughout Indian Country, due in part to the chronic underfunding of the IHS.

   In an effort to help address this shortfall, Congress granted IHS and Tribal governments the authority to bill Medicaid for the services provided to eligible AI/ANs and enacted a provision that prevents consideration of Medicaid reimbursements when determining IHS appropriations. To date, Medicaid represents approximately 67% of IHS third party revenue and 13% of overall spending. Furthermore, Congress provided for a 100% federal medical assistance percentage (FMAP) for Medicaid services received through IHS or Tribal facilities to ensure that Indian health care remained a Federal responsibility and has amended Medicaid numerous times to accommodate the unique nature of IHS. Underlying these actions is the very clear Congressional intention for Medicaid to serve as a supplement to IHS funding and assist in providing quality health care for AI/ANs. Therefore, reduction of Medicaid funding to IHS and the implementation of mandatory work requirements are a direct contradiction to Congress's intention and fundamentally inconsistent with the Federal Trust Responsibility and treaty obligations.

In closing, the TSGAC strongly recommends that a clear blanket exemption for AI/ANs should be included in any proposals to implement work requirements, either as part of the federal Medicaid program or a specific state plan.

Thank you for taking the time to consider Indian Country's unique circumstances. We look forward to working with you further on this issue and continuing to strengthen the government-to-government relationship Tribes have with CMS. If you have any questions or wish to discuss this further, please contact me at (860) 862-6192 or via email at lmalerba@moheganmail.com.

Sincerely,

Marilynn "Lynn" Malerba
Chief, The Mohegan Tribe of Connecticut
Chairwoman, Tribal Self-Governance Advisory Committee

cc: Kitty Marx, Director, Division of Tribal Affairs/IEAG/CMCS
Jennifer Cooper, Acting Director, OTSG, IHS
TSGAC Members and Technical Workgroup