

Health Reform Update Medicaid Waivers

**Tribal Self-Governance Advisory Committee
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Administrative Changes to Medicaid

- March 14, 2017 Price/Verma Letter to Governors
- Sets broad outlines for the types of waivers CMS would entertain
- Focus on reducing administrative burdens, increasing state flexibility, and transitioning able bodied adults to work and health insurance coverage

“The expansion of Medicaid through the Affordable Care Act (ACA) to non-disabled, working age adults without dependent children was a clear departure from the core, historical mission of the program. Moreover, by providing a much higher federal reimbursement rate for the expansion population, the ACA provided states with an incentive to deprioritize the most vulnerable populations. The enhanced rate also puts upward pressure on both state and federal spending. We are going to work with both expansion and non-expansion states on a solution that best uses taxpayer dollars to serve the truly vulnerable.”

- Letter to Nation’s Governors from Secretary Price and Administrator Verma, March 14, 2017

Price/Verma Letter

- Streamline State Plan Amendment (SPA) approval process
- “Fast-track” approval of Waiver and demonstration project approvals and amendments
- Incorporate state waiver requests that have already been approved in other states
- Align Medicaid and private insurance policies for non-disabled adults

Price/Verma Letter

- Invites work requirements by encouraging innovations that involve “training, employment, and independence”
- Invites states to consider:
 - Premium or contribution requirements
 - Cost-sharing models, including use of HSAs
 - Emergency room co-pays
 - Waivers of presumptive eligibility and retroactive coverage that do not encourage continuous coverage

CRS Report on Judicial Review of Work Requirements

- March 28, 2017 CRS report on whether CMS could legally impose work requirements through a 1115 waiver
- CRS report notes this issue has not been addressed by the courts
- Report indicates that circuit courts have split on whether CMS can approved a waiver that imposes work requirements in connection with the Aid to Families with Dependent Children (AFDC).
- CRS concludes that in order to survive judicial review, an 1115 waiver proposal that imposes work requirements must (1) evaluate whether the waiver will support Medicaid's objectives; and (2) whether the administrative record supports such a determination.
- CRS notes that a simple benefits cut, without more, would likely not sustain judicial review.

State Responses to Price/Verma Letter

- Eligibility limits for able-bodied adults
- Proposals include imposing premiums, co-pays and HSA accounts, work requirements, and time limits
- Goal is to train Medicaid enrollees on how health insurance works and get them off of Medicaid
- Ensure they have “skin in the game”

Kentucky Waiver Proposal

- Kentucky submitted Section 1115 waiver request on August 24, 2016.
- Monthly premiums of \$1 to \$15 per family.
- Structured as high-deductible health plan with two accounts similar to health savings accounts: one with \$1000 from State to fully fund annual deductible; one to accrue savings and incentives to purchase enhanced benefits.
- Incentives for participation in chronic disease management activities.
- Work requirements for all non-disabled, working age adults without dependents.
- Waiting period of 6 months if disenrolled for failure to comply with program requirements, exception provided for participation in financial or health literacy course.
- SUD waiver to expand access to in-patient SUD treatment.

Wisconsin Waiver Proposal

- Will be submitted end of May. Comments due May 19, 2017.
- Monthly premiums will range from \$1 to \$10 for persons with income between 20% FPL and 100% FPL.
- Co-pay for emergency room visits of \$8 for first visit and \$25 for subsequent visits within 12-month period.
- Health risk assessments and healthy behavior incentives will reduce premiums by 50% for engaging in certain behaviors.
- Time Limit/Work Requirements. Time limit of 48 months, after which no eligibility for six months. Engaging in 80 hours of work/training per month exempts month from counting toward 48-month limit.
- Drug screening required and may subsequently require drug testing. Individuals will be referred to substance use disorder (SUD) treatment for testing positive, and failure to participate will result in 6 months of ineligibility.
- No Exemptions for American Indians and Alaska Natives

Arizona SB 1092

- Requires State to submit waiver by March 30th each year that includes:
- Premiums and copays to discourage emergency room use
- Work requirements for able bodied adults
- Five year lifetime limit on able bodied adults
- HSA-like accounts

Four Governors' Medicaid Reform Letter

- On March 16, 2017 Letter from Governor Snyder along with Governors Kasich (OH), Sandoval (NV), and Hutchinson (AR) to Senate Majority Leader Mitch McConnell and House Speaker Paul Ryan
- Per capita cap or block grant model in exchange for increased state flexibility, but AI/ANs exempt from Caps

Governors' Letter: State Flexibility

- Eligibility conditions or limits, including work requirements or other requirements to promote state-specific policy goals
- Co-pays and Cost-sharing
- Benefit redesign, including redesign of statewideness and comparability requirements
- Flexibility in service delivery, including mandatory managed care enrollment for anyone except AI/ANs
- Authority to set provider payment rates and structures
- Streamlining of administrative policies
- Ability to use contractors to conduct eligibility, enrollment, and workforce service functions

AI/AN should be exempt from these requirements

- Existing law protects AI/Ans from premiums, co-pays and cost sharing of any kind
- Work requirements won't work in Indian country
- Services received through IHS and tribal healthcare programs are reimbursed at 100 percent FMAP to the States

ARRA Protections

- No premiums, co-payments, deductibles or cost sharing of any kind for services received through IHS, Tribe or PRC. SSA § 1916(j)(1)(A); 42 U.S.C. § 1396o(j)(1)(A).
- Payment to I/T/U cannot be reduced by the absence of copays or premiums from an AI/AN patient. SSA § 1916(j)(1)(B); 42 U.S.C. § 1396o(j)(1)(B).
- Trust land and items of cultural, religious or traditional significance not “resources” for purposes of determining Medicaid eligibility for AI/ANs. SSA 1902(ff)(1)-(4); 42 U.S.C. § 1396a(ff)(1)-(4).
- Certain income and resources exempt from Medicaid estate recovery. SSA § 1917(b)(3)(B); 42 U.S.C. § 1396p(b)(3)(B).

ARRA Managed Care Protections

- If an AI/AN elects to enroll in an MCO, they are allowed to designate an Indian health care provider as their primary care provider if in-network. SSA § 1932(h)(1); 42 U.S.C. § 1396u-2(h)(1).
- An Indian health care provider must be promptly paid at a rate negotiated between the MCO and provider, or at a rate not less than the amount an MCO would pay to a non-Indian health care provider. SSA § 1932(h)(2)(A)-(C); 42 U.S.C. § 1396u-2(h)(2)(A)-(C).
- If the MCO pays the Indian health care provider less than what the Indian health care provider would be paid under the State plan (the encounter rate), then the State must make up the difference in a wraparound payment to the Indian health care provider. SSA § 1932(h)(2)(C)(ii); 42 U.S.C. § 1396u-2(h)(2)(C)(ii).

Exemption from Work Requirements

- There are no statutory or regulatory exemption from work requirements for AI/AN in Medicaid, but there are good arguments why they should not be imposed
- Incentive structures different. AI/AN Medicaid beneficiaries can fall back on IHS coverage, so little to no incentive to meet Medicaid work requirements. Work requirements will result in fewer AI/AN enrolled in Medicaid, which means fewer Medicaid resources for Indian healthcare providers
- Work requirements difficult if not impossible to meet for AI/AN Medicaid beneficiaries. Many reservation communities have very high unemployment rates, and many AI/AN do not access State employment programs – they look to their Tribes instead.
- Work requirements inconsistent with federal trust responsibility

Strategies for Tribes

- Understand State priorities
 - Increased flexibility
 - Decreased costs
 - Other goals
- Engage with State to Preserve Tribal Rights
 - Preserve tribal statutory rights
 - Preserve exemption from work requirements and free AI/AN access to Medicaid program
 - Work with States to increase 100 Percent FMAP reimbursement
- Engage directly with CMS

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