



Center for Medicaid and State Operations

June 9, 2006

SMDL#06-014

Dear State Medicaid Director:

On October 18, 2005 The Centers for Medicare & Medicaid Services (CMS) issued a State Medicaid Director (SMD) letter containing guidance for participation by Tribal organizations in arrangements that use certified public expenditures by a “unit of government” to fulfill the non- federal matching requirements for administrative activities under the Medicaid program. The letter set forth criteria under which a Tribal organization may be considered as a unit of government that can certify expenditures as the non-Federal share of Medicaid administration claims. The letter contained the following footnote:

“Federal funds may not be used to meet State matching requirements, except as authorized by Federal law. Although Federal HHS funds awarded under ISDEAA [the Indian Self-Determination and Education Assistance Act, or Pub.L. 93-638] may be used to meet Tribal matching requirements, that authority does not include State matching requirements. As a result, Tribal expenditures certified for this purpose must be funded through non-ISDEAA sources.”

Although the footnote correctly states the applicable principles of law, after further review, we have determined that the conclusion in the last sentence would not apply when the full financial benefit and responsibility has been assigned to the tribal organization. The Indian Health Service (IHS) and CMS are issuing this joint SMD letter to clarify that footnote.

When a State assigns to a tribal organization the full right to the federal matching share, without any diminution, along with the full responsibility for establishing the non-federal share through certified public expenditures, the State effectively drops out of the financial equation. What remains is a funding arrangement under which federal matching funds are directly available to the tribal organization based on the tribal organization’s expenditures. This is effectively a tribal matching obligation, rather than a contribution to a larger State matching obligation.

Based on this analysis that such an arrangement effectively results in a tribal matching obligation, the Indian Health Service (HIS) has determined that ISDEAA funds may be used for certified public expenditures under such an arrangement to obtain federal Medicaid matching funding. The net required contribution by the Tribal organization cannot exceed the non-Federal share of such expenditures; thus the State must pass through to the Tribal organization the full amount of Federal Medicaid matching funding received based on the certified expenditures.

It is important to note that ISDEAA funds may only be used to fund activities permissible under the ISDEAA. This includes activities authorized under the Snyder Act, 25 U.S.C. 13, and the Indian Health Care Improvement Act (IHCIA), 25 U.S.C. §1601 et seq. Thus, any Medicaid administrative activities that are funded with ISDEAA funds must also be permissible activities under the Snyder Act or the IHCIA.

The October 18, 2005 State Medicaid Director letter also contained four criteria for recognition of Tribal organization expenditures as the non-Federal share of Medicaid administration claims. The fourth criterion, stating that expenditures for allowable administrative activities which are certified by the Tribal organizations must be made with Tribal sources of revenue other than Medicaid revenues or ISDEAA funds is amended to delete the reference to ISDEAA funds, which may now be used as outlined in this letter. Additionally, a fifth criterion is hereby added. The fourth and fifth criteria now read as follows:

4. Expenditures for allowable Medicaid administrative activities which are certified by the Tribal organization are made with funds derived from Tribal sources of revenue other than Medicaid revenues.
5. Expenditures made with funds derived from ISDEAA agreements may be certified by the Tribal organization only to the extent that the State passes the entire amount of Federal Medicaid matching funding to the Tribal organization.

Tribes, as well as Tribal organizations, which certify Medicaid administration expenditures made with funds derived from ISDEAA agreements, must receive the full amount of Federal Medicaid matching funding.

If you have questions regarding this matter, please contact Ed Gendron at CMS on 410-786-1064 or Carl Harper at HIS on 301-443-3216.

Sincerely,

/s/
Dr. Charles Grim, D.D.S.,M.H.S.A.
Director
Indian Health Service

/s/
Dennis G. Smith
Director
Center for Medicaid and State Operations

Cc:

CMS Regional Administrators

CMS Associate Regional Administrators
For Medicaid and State Operations

Martha Roberty
Director, Health Policy Unit
American Public Human Services Association

Joy Wilson
Director, Health Committee
National Conference of State Legislatures

Matt Salo
Director of Health Legislation
National Governors Association

Jacalyn Bryan Carden
Director of Policy and Programs
Association of State and Territorial Health Officials

Christie Raniszewski Herrera
Director, Health and Human Services Task Force
American Legislative Exchange Council

Lynne Flynn
Director for Health Policy
Council of State Governments

H. Sally Smith
Chairperson
National Indian Health Board

Valerie Davidson
Chairperson
CMS Tribal Technical Advisory Group

HIS Area Directors