DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-25-26
Baltimore, Maryland 21244-1850

NOV 21 2018

Rebecca Pasternik-Ikard
Chief Executive Officer
Oklahoma Health Care Authority
4345 N. Lincoln Boulevard
Oklahoma City, OK 73105

Dear Ms. Pasternik-Ikard:

This letter is in response to Oklahoma's March 7, 2016, request for an amendment to its section 1115 demonstration, SoonerCare. Oklahoma requested to create, in its Insure Oklahoma program, a Sponsor's Choice Option, in which the state would provide premium assistance for certain individuals to receive coverage through qualifying health plans, with no premium payments or cost-sharing required from the beneficiary. Eligible individuals would be adults with income up to 200 percent of the federal poverty level (FPL), who are uninsured, and meet all other eligibility requirements for Medicaid. Eligible individuals must also be sponsored by a qualified sponsor, which include Oklahoma tribally-operated health facilities, Indian Health Service (IHS) Units, or Urban Indian Health Service Units. The state further proposes that Sponsor's Choice coverage also be available for dependent children of eligible adults in households with income between 186 percent and 200 percent of the FPL.

In subsequent conversations with the state, we learned that the state proposes to claim the 100 percent Federal Medical Assistance Percentage (FMAP) under section 1905(b) of the Social Security Act (the Act) for the cost of providing premium assistance to these individuals, with no contribution of non-federal share. The state's amendment request also proposes that qualifying health plans must pay the OMB Encounter Rate to Oklahoma tribally-operated health facilities, Indian Health Service Units, or Urban Indian Health Service Units for services rendered to sponsored individuals.

Under section 1905(b) of the Act, the federal government is required to match, at a 100 percent FMAP rate, state expenditures on behalf of American Indian and Alaska Native (AI/AN) Medicaid beneficiaries for covered services "received through" an Indian Health Service facility whether operated by the Indian Health Service or by a Tribe or Tribal organization. CMS's current interpretation of when the 100 percent FMAP rate under section 1905(b) is available for state expenditures on services "received through" an Indian Health Service facility was articulated in our February 26, 2016 State Health Official Letter (SHO #16-002, available here: https://www.medicaid.gov/federal-policy-guidance/downloads/SHO022616.pdf).

Premium assistance is *financial assistance* provided by the state Medicaid program for a beneficiary's cost of coverage from a group health plan and is not a *covered Medicaid service* defined in section 1905(a) of the Act and implementing regulations. Because the 100 percent

FMAP rate under section 1905(b) is only available for otherwise qualified state expenditures on covered Medicaid services (i.e., services defined in section 1905(a) of the Act and implementing regulations), the 100 percent FMAP rate under section 1905(b) is not available for state expenditures on premium assistance.

This interpretation is consistent with CMS' response to Wyoming, related to its request for 100 per cent federal match for its proposed uncompensated care program. On March 6, 2018, CMS sent a letter to Wyoming communicating that the 100 percent federal match only applies to *services* received through IHS and tribal facilities, and uncompensated care payments are not services for Medicaid beneficiaries.

It is not possible for CMS to grant waiver or expenditure authority under section 1115 of the Act to change or avoid these section 1905(b) requirements and match Oklahoma's proposed premium assistance expenditures at the section 1905(b) 100 percent FMAP. Only provisions of section 1902 of the Act may be waived under section 1115(a)(1) of the Act, so CMS cannot waive section 1905(b) under section 1115(a)(1) of the Act. Moreover, while CMS could, under section 1115(a)(2), identify as federally matchable state expenditures not otherwise specified in section 1903 of the Act, section 1115(a)(2) does not enable CMS to waive section 1903 or 1905(b) provisions authorizing specific FMAPs for specific types of expenditures.

We support the state's goal of improving access and the quality of healthcare offered through providers who serve individuals who are AI/AN, and appreciate the state's efforts to address the health disparities of uninsured AI/AN. CMS staff remain available to continue to explore and provide technical assistance on other options that may be available that can support the state's goals.

If you have any questions, please contact your project officer, Ms. Annie Hollis. Ms. Hollis can be reached at Annie.Hollis@cms.hhs.gov. We will continue to work with you and your staff on an approvable approach.

Sincerely,

[redacted]

Mary C. Mayhew
Deputy Administrator and Director

cc: Bill Brooks, Associate Regional Administrator, CMS Dallas Regional Office