

**COMMENTS OF THE FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA
CENTERS FOR MEDICARE AND MEDICAID SERVICES, DIVISION OF TRIBAL
AFFAIRS, INTERGOVERNMENTL EXTERNAL AFFAIRS GROUP, CENTERS FOR
MEDICAID AND CHIP SERVICES
IN RESPONSE TO ITS TRIBAL WHITE PAPER ENTITLED MEDICAID SERVICES
“RECEIVED THROUGH” AN INDIAN HEALTH SERVICE/TRIBAL FACILITY: A
REQUEST FOR COMMENTS**

The Fond du Lac Band of Lake Superior Chippewa appreciates that CMS is attempting to update its policy regarding the circumstances under which 100 percent federal funding would be available for services furnished to Medicaid-eligible American Indian and Alaska Native (AI/AN) individuals through facilities of the Indian Health Services (IHS) or Tribes.

The Fond du Lac Band of Lake Superior Chippewa supports an interpretation of section 1905(b) of the Social Security Act that would expand the circumstances in which state Medicaid payments for services furnished to AI/AN beneficiaries would be considered to be “received through” an IHS/Tribal facility and therefore qualify for 100 percent Federal Medical Assistance Percentage (FMAP). The following are specific comments on each of the conditions mentioned in the CMS Tribal White Paper:

1. Modifying the second condition. The Fond du Lac Band of Lake Superior Chippewa is supportive of the option under which a service “received through” an IHS/Tribal facility could be any service encompassed within a Medicaid state plan benefit category that the IHS/tribal facility is authorized to provide. We also support the inclusion of emergency transportation (EMT) and non-emergency transportation (NEMT) services, including related travel expenses.
2. Modifying the third condition. The Fond du Lac Band of Lake Superior Chippewa supports CMS’ consideration of the option that would expand the meaning of a contractual agent to include a qualified individual or entity that is enrolled as a Medicaid provider and who provides items or services not within the scope of a Medicaid “facility services” benefit but within the IHS/Tribal facility authority.

Presently the language is confusing regarding the contractual arrangements required. Most tribes that refer to non-IHS/638 providers for specialty care due so with a referral and do not control the medical records maintained by the provider. Requiring the IHS/tribal provider to retain control of the medical records will render this opportunity meaningless for outpatient clinics that rely on larger hospital based practices for inpatient and specialty services.

The Band has unwritten agreements with many health care providers it refers patients to. Requiring written contracts will restrict the state’s ability to receive FMAP. We would

recommend this language be clarified to say “contract or agreement arrangement” rather than “written contact requirement.” We agree that the individuals served must have some type of relationship with the IHS/tribal facility. The requirement that “IHS/Tribal facilities would need to retain responsibility for the provision of services, meaning that the IHS/Tribal facility must retain control of the medical records, including updating medical records with information from care provided by contractual agents and providing care coordination for the AI/AN individual” would be impossible to implement. Currently, in these types of relationships, the outside provider sends the referring provider a copy of the visit report with any recommendations or plans of care, which are then filed in the patients’ medical record.

The Band recommends that a clarification be inserted to say “any service that is authorized to be provided by an IHS/tribal facility would be eligible for Medicaid reimbursement.” The Band also strongly recommends that CMS consider describing any specific restrictions that it will place on State Medicaid Plans concerning rate ceilings/rate determinations/operational requirements so that tribes and states will not waste valuable time negotiating provisions that CMS will not approve.

3. Modifying the fourth condition. The Fond du Lac Band of Lake Superior Chippewa supports CMS’s proposal to allow IHS/Tribal facilities the choice of whether they will bill the State Medicaid program directly for the services referred to outside contractual agent, or allowing the contractual agent to bill the State Medicaid program directly for the service. If CMS wants to allow contractual agents to bill Medicaid programs directly, it must develop clear and specific methods for the process involved if it intends to pay the provider at a rate other than a rate the provider would customarily receive for the service. If the rate remains unchanged, the provider will not be incented to complete any additional administrative tasks in order for the state to receive 100% FMAP.
4. Application to fee-for-service. CMS’s proposal clarifies that services that are of the type encompassed within the applicable (Medicaid) facility benefit, an IHS/Tribal facility would receive payment at the rate applicable for IHS facilities in the State plan. Services that could be furnished pursuant to IHS/Tribal authority but that are not within the applicable facility benefit would be paid at the State plan rates applicable to those services. Examples provided include personal care, home health, 915(c) waiver services and non-emergency medical transportation. However, CMS notes that “states retain flexibility in establishing economic and efficient payment rates to sufficiently reimburse for the provision of services.” This last sentence is critically important, as it recognizes the authority of States to establish payment rates that sufficiently reimburse for the provision of services, and allows them continued flexibility in setting those rates. We support this proposal, and strongly recommend that CMS retain this language in the document it finalizes.

5. Application to managed care. The Band appreciates CMS's effort to clarify that states may claim 100% FMAP for that portion of any capitation rate they pay to a managed care plan that represent services provided to AI/AN individuals enrolled in a managed care plan. The Band supports that states will be permitted to claim 100% FMAP for a "portion of the capitation payment for AI/AN individuals who are enrolled in managed care."

The Band would like to request that CMS carefully consider the complexities of the business relationships that are part of the health care financing landscape and that entities cooperate based on specific incentives they recognize as helpful to their own interests. Insurance carriers will not be eager to provide additional documentation to the state so that the state can receive 100% FMAP unless the state is permitted to provide them with incentives that will reward the behavior. The Band also requests that CMS consider the burden it places on the state to qualify for FMAP in managed care arrangements. Many efforts toward health care reform authorized in the ACA have stumbled, not because the policies aren't sound, but because the IT requirements are too monumental.

Complicating the current reform efforts is the value-based purchasing initiatives many states are pursuing with the assistance of CMS. Careful consideration needs to take place to ensure that the efforts to expand 100% FMAP do not collide with other health care reform strategies.

Conclusion

Thank you for considering these comments. Those IHS/Tribal health care administrators who have hammered out various payment and reimbursement arrangements with non-IHS/tribal providers and insurance carriers over the years, recognize the complexities of implementing new policy initiatives that will create additional administrative burdens. The significant differences between states and the enormous differences between IHS/tribal health care delivery systems makes establishing workable rules extremely challenging. The Band encourages CMS to permit as much flexibility to the states and tribes as possible so that workable operational strategies can be crafted within this complex environment. While the Band appreciates CMS's efforts to create new opportunities for ultimately improving health care access for AI/AN, it hopes that CMS does not make the opportunities unachievable because of overly burdensome administrative tasks.