

November 16, 2015

To: TribalAffairs@cms.hhs.gov

Fra: iris-reano@pueblodecochiti.org

Re: Request for Comment= Medicaid Services 'Received through' an Indian Health Service/Tribal Facility.

Dear Sirs/Madame

Thank you for allowing the Pueblo de Cochiti to comment on CMS' updating its policy regarding the 100% FMAP reimbursement federal funding available for services provided to Medicaid eligible American Indian and Alaska Natives (AI/AN) individuals for facilities of the IHS and Tribes. The 100% FMAP should continue under section 1905 (b) of the Social Security Act. The Pueblo of Cochiti currently provided dental services under a 638 contract and has plans to assume more Functions and Services under the Public Law in the future. The Pueblo is aware of the covered services currently approved under the New Mexico State Plan. As such, the State covered services are limited in the actual services that the tribe provides to ALL its members.

In reviewing the policy changes under consideration the following comments are made:

1. Modifying the second condition. The State has contracted Medicaid services to 4 MCOs. The MCOs provide State Medicaid approved services to enrolled members including 26% of the AI/enrollees. It reimburses the MCOs under a capitation agreement on a monthly basis. The intent covers cradle to grave services under a medical and behavioral health medical homes concepts. The capitation rate includes transportation, case management, administrative costs, care givers for elder care, travel costs 'normally' not IHS contracted functions under PL 638 Programs, Functions, Services and Activities. If the state already can do a capitation plan to MCOs why can't such services and/or 'any services' provided by a tribal 'facility service' 638 service or not, be reimbursed to the tribal entity? The IHS does not provide all the 'authorized' services under the federal authorizing legislation the Indian Health Care Improvement Act. IHS does not provide elder care, long term care, hospice and services that are under State Approved Medicaid services. If tribes provide these services under their 'facility service' then such services should be reimbursed to tribes just like the MCOs.
2. Modifying the third condition. Many services of a Tribal facility such as Community Coordinated Services, Caregivers to chronic health patients, Massage Therapy, Homemakers, counseling services by traditional providers are under tribal authority. Tribal EMS providers are grossly underfunded by IHS and billing reimbursement is administratively burdensome and Non-

Emergency transports are the major obstacle in accessing care. Care coordination and case management is the major need in tribal communities even with limited IHS services, state service, MCOs, private insurance providers. Keep in mind 74% of AI/AN Medicaid enrollees are Fee For Service in this State. The 638 facilities already have TORT coverage for their contracted providers providing 638 services contracted with IHS. Patients seen outside the four walls of the facility are covered under the scope of practice and extension of facility services. Under a medical home concept the best care is at home or near home and less costly per the medical home literature.

3. Modifying the fourth condition. Tribal facilities must maintain responsibility for service provisions and bill directly for Medicaid services. If an option is made to have written contracts with contractual agents will need more clarification on liability, administrative controls and documentation and tribal audits on services and finances. Clearly defining a 'contractual agent' will be needed.
4. Application of Fee For Service. The AIR should remain for tribal and contracted providers. It is a positive action to reimburse a tribal facility on services not within the scope of applicable facility 'benefit'. Non-emergency transports, personal care, caregivers, counselors being paid at a reasonable rate will enhance basic medical needs never seen nor reimbursed by traditional medical facilities.
5. Application to managed care. The State Medicaid program will save their portion of Medicaid care by MCOs and non-tribal/IHS facilities. At this time, validating that services are actually provided by MCOs to AI/NA enrollees under state plans is still an issue not resolved to this Pueblo's satisfaction. An example is MCOs have not reimbursed tribal programs for tribal MCO members transported by tribal resources. The reasons are no contracts consummated with tribes, transportation requirements need state authorized/approved transportation entities only and continues to be a non-reimbursed tribal service to MCOs who already has received capitation funding for transportation.

I recommend formal definitions be written, formal and announced face to face meetings be held, State Medicaid Directors be present on explaining the proposed policies. Keep in mind the AI/AN health care is authorized under federal laws and federal protections and the State is NOT educated on how the federal laws protect and provide the health care framework in Native lands. States wants to simplify and streamline services for ALL state residents without the knowledge of federal laws trumping state laws.

Some federal laws, regulations and protections for AI/AN include, but not limited to:

- Older Americans Act of 1965,
- Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, as amended
- The Indian Health Care Improvement Act, Pub. L. 94-437,
- Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193
- Presidential Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,
- Presidential Memorandum, Government-to-Government Relationship with Tribal Governments, September 23,2004;

- American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 123 Stat. 115 (Feb. 17, 2009);
- Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. 111-3, 123
- Patient Protection and Affordable Care Act of 2010, Pub. L. 111-148, 124 Stat. 119 (Mar. 23, 2010).

Thank You for this opportunity and best regards,