



Medical Services
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Jack Dalrymple, Governor
Carol K. Olson, Executive Director

Mailed
SEP 30 2011

MEMORANDUM

Date: September 30, 2011
To: Tribal and Indian Health Services Representatives
From: Maggie Anderson, Medical Services Director *Maggie*
Subject: Proposed State Plan Amendments

This letter is regarding the Tribal Consultation between the North Dakota Department of Human Services and the North Dakota Indian Tribes. This consultation process was established to ensure Tribal governments are included in the decision making processes when changes in the Medicaid or Children's Health Insurance Program(s) will affect items such as cost or reductions and additions to the program. The North Dakota Department of Human Services engages Tribal consultation when a State Plan Amendment, waiver proposal or amendment, or demonstration project proposal directly impacts the North Dakota Tribes and/or their Tribal members.

This letter is specific to:

1. Submission of a State Plan Amendment defining Tribal Consultation
2. Submission of a State Plan to provide detail regarding the Indian Health Services encounter payments, and
3. The continuation of the Health Management Program for Medicaid recipients with one or more of the following chronic diseases: asthma, chronic obstructive pulmonary disease (COPD), congestive heart failure (CHF) and diabetes. The Department will be sunsetting the waiver and opting to continue health management services under the authority of the State Plan. This transition will make available the opportunity for physicians, nurse practitioners, clinics, and health teams to offer health management services to Medicaid recipients with certain chronic conditions.

The Department of Human Services, Medical Services Division expects that these State Plan Amendments may directly impact the North Dakota Tribes or Tribal Programs and we seek your input on each amendment.

(Over)

The proposed changes are intended to engage North Dakota Tribes on Medicaid and CHIP activities, provide detail regarding the Indian Health Services payments and increase access to Health Management services for eligible Medicaid recipients.

If you have any comments, questions or concerns about the proposed State Plan Amendments, please contact me at manderson@nd.gov or by mailing a written response to 600 East Boulevard Avenue, Department 325, Bismarck, ND 58505 or by calling 701.328.1603.

The Department appreciates the continuing opportunity to work collaboratively with you to achieve the Department's mission, which is: "To provide quality, efficient, and effective human services, which improve the lives of people."

Enclosures

State: North Dakota

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

Section 1.4 State Medical Care Advisory Committee (42 CFR 431.12(b))

There is an advisory committee to the Medicaid agency director on health and medical care services established in accordance with and meeting all the requirements of 42 CFR 431.12.

The Department of Human Services has invited each tribe to identify designees to attend the Medicaid Medical Advisory Committee. Individuals who have been designated are added to the distribution lists for information about the meetings.

If a Tribe has not identified a designee, the Department notifies the Tribal Chairperson and the Health Care Lead of the upcoming meeting(s).

Tribal Consultation Requirements:

Section 1902(a)(73) of the Social Security Act (the Act) requires a State in which one or more Indian Health Programs or Urban Indian Organizations furnish health care services to establish a process for the State Medicaid agency to seek advice on a regular, ongoing basis from designees of Indian health programs, whether operated by the Indian Health Service (IHS), Tribes or Tribal organizations under the Indian Self-Determination and Education Assistance Act (ISDEAA), or Urban Indian Organizations under the Indian Health Care Improvement Act (IHICIA). Section 2107(e)(1) of the Act was also amended to apply these requirements to the Children's Health Insurance Program (CHIP). Consultation is required concerning Medicaid and CHIP matters having a direct impact on Indian health programs and Urban Indian organizations.

Please describe the process the State uses to seek advice on a regular, ongoing basis from federally-recognized tribes, Indian Health Programs and Urban Indian Organizations on matters related to Medicaid and CHIP programs and for consultation on State Plan Amendments, waiver proposals, waiver extensions, waiver amendments, waiver renewals and proposals for demonstration projects prior to submission to CMS. Please include information about the frequency, inclusiveness and process for seeking such advice.

Background and purpose:

The American Recovery and Reinvestment Act (ARRA) of 2009 contains provisions for Medicaid that: "In the case of any State in which one or more Indian Health Programs or Urban Indian Organizations furnishes health care services, provide for the process under

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which they seek advice on a regular, ongoing basis from the designees of such Indian Health Programs and Urban Indian Organizations on matters relating to the application of this title that are likely to have a direct effect on such Indian Health Programs and Urban Health Organization and that: a) shall include solicitation of advice prior to submission of any plan amendments, waiver requests, and proposals for demonstration projects likely to have a direct effect on Indians, Indian Health Programs, or Urban Indian Organizations; and b) may include appointment of an advisory committee and of a designee advising the State on its State plan under this title.”

The North Dakota Department of Human Services acknowledges that there are legal and stakeholder partnerships with the Indian Tribes in North Dakota. These partnerships have grown throughout the years and will continue to be an integral part of implementing the revisions set forth by the American Recovery & Reinvestment Act (ARRA) and the Patient Protection and Affordable Care Act (ACA).

It is the intent of the North Dakota Department of Human Services to consult on a regular basis with the Indian Tribes established in North Dakota on matters relating to Medicaid and Children’s Health Insurance Program (CHIP) eligibility and services, which are likely to have a direct impact on the Indian population. This consultation process will ensure that Tribal governments are included in the decision making process when changes in the Medicaid and CHIP programs will affect items such as cost or reductions and additions to the program. The North Dakota Department of Human Services shall engage Tribal consultation with a State Plan Amendment, waiver proposal or amendment, or demonstration project proposal when any of these items will likely have a direct impact on the North Dakota Tribes and/or their Tribal members.

Process Effect:

To determine if the changes directly impact the Tribal system, questions may include: Does the proposal or change directly impact the Tribal Members or Tribal programs, but is federally or statutorily mandated? If yes, and states have no flexibility in the mandate, a notice will be given to the North Dakota Tribes. If there is some flexibility in implementing the mandate, communication will be initiated between the North Dakota Department of Human Services and the North Dakota Tribes.

Does the proposal or change impact services or constrict access to services provided by or contracted for IHS or the Indian Tribes (i.e. decrease/increase in services, change in provider or service requirements, cost changes to IHS/Tribal health or change in reimbursement rates?) In these situations, communication will be initiated between the North Dakota Department of Human Services and the North Dakota Indian Tribes and Indian Health Services (IHS).

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Does the proposed modification negatively impact or change the eligibility for or access to Medicaid or CHIP for Tribal members? **In this situation, communication will be initiated between the North Dakota Department of Human Services, the North Dakota Indian Tribes and Indian Health Services.**

Communication:

When it is determined that a proposal or change would have a direct impact on North Dakota Tribes or Tribal members, the North Dakota Department of Human Services will use one or more of the following methods to provide notice or request input from the North Dakota Indian Tribes and IHS.

- a. Indian Affairs Commission Meetings
- b. Interim Tribal and State Relations Committee Meetings
- c. Medicaid Medical Advisory Committee Meetings
- d. Independent Tribal Council Meetings
- e. Written Correspondence to Tribal Chairs, Tribal Healthcare Directors, the Executive Director of the North Dakota Indian Affairs Commission, and Indian Health Services Representatives.

Ongoing Correspondence:

- A web link will be located on the North Dakota Department of Human Services website specific to the North Dakota Tribes. Information contained on this link will include: notices described below, proposed and final State Plan amendments, frequently asked questions and other applicable documents.
- A specific contact at the North Dakota Department of Human Services Medical Services Division, in addition to the Medicaid Director, will be assigned for all ongoing Tribal needs. This contact information will be disseminated in the continuing correspondence with the North Dakota Tribes.

Notice of changes will be sent to:

- North Dakota Tribal Governments-Tribal Chairman/Chief of each Tribal entity
 - Tribal Healthcare Directors
- IHS and Tribal Health Clinic Executive Directors on each Tribal Reservation
- North Dakota Indian Affairs Commission
- Aberdeen Area Indian Health Services
- Great Plains Tribal Chairmen's Health Board

Content of the notice will include:

- **Purpose of the proposal/change**
- **Effective date of change**
- **Anticipated impact on Tribal population and programs**
- **Location, Date and Time of Face to Face Consultation OR If Consultation is by Written Correspondence, the Method for providing comments and a timeframe for responses.**

Meeting Requests:

In the event that written correspondence is used and a written response is not sufficient due to the extent of discussion needed by either party, The North Dakota Department of Human Services or North Dakota Tribes can request a face to face meeting with 30 days, by written notice, to the other party.

Please describe the consultation process that occurred specifically for the development and submission of this State Plan Amendment, when it occurred and who was involved.

September 2009, the Medicaid Director attended the “Tribal-State Medicare and Medicaid meeting” sponsored by the Office for Elimination of Health Disparities (ND Department of Health). Input was received from those attending regarding the implementation of changes from the American Recovery and Reinvestment Act; including Tribal Consultation.

October 2009, The Department of Human Services hosted a Tribal Consultation/Collaboration meeting. Letters of Invitation were sent to all Tribal Chairpersons, Tribal Substance Abuse Administrators, Tribal Health Administrators, and the Executive Director of the Aberdeen Area Tribal Chairman’s Health Board.

July 2010 – The Department of Human Services met with Tribal staff members for a Tribal Stakeholder meeting. The Draft Tribal Consultation Policy was discussed.

August 2010 – The Department invited each Tribe, the Indian Affairs Commission, and Indian Health Services to the Medicaid Medical Advisory Committee meeting on October 21, 2010.

September 2010 – Tribal leaders were invited to a Collaboration meeting with staff from the Indian Affairs Commission, the Department of Human Services and County Social Services staff. The Draft Tribal Consultation policy was distributed and discussed and comments were requested.

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December 2010 – The Department mailed the Draft Tribal Consultation Policy to Tribal Chairpersons, Tribal Health Administrators, Indian Health Services Offices, and the Aberdeen Area IHS office and Tribal Chairman’s Health Board. Comments were requested.

August 2011 - The Department invited each Tribe, the Indian Affairs Commission, and Indian Health Services to the Medicaid Medical Advisory Meeting on September 14, 2011.

September 2011 – The Medicaid Director provided testimony to the Interim Tribal and State Relations Committee. The testimony included a review of the revised Tribal Consultation Policy. The day after the committee meeting, the Tribal Consultation Policy was sent to the Executive Director of the Indian Affairs Commission, and he forwarded the policy to the Tribal Chairs.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-1098. The time required to complete this information collection is estimated to average 1 hour per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, Attn: PRA Reports Clearance Officer, Mail Stop C4-26-05, Baltimore, Maryland 21244-1850.

29. Health Services Payments to Indian Health Service (IHS) will be per encounter per day and based on the approved rates published each year in the Federal Register by the Department of Health and Human Services.
- A. An encounter for a 638 or IHS facility means an encounter between a recipient eligible for Medicaid and a health professional at or through an IHS or 638 service location.
 - B. Encounters with more than one health professional and multiple visits with the same health professional within the same service category that take place within the same 24-hour period constitute a single encounter; except when the recipient, after the first encounter, receives services related to a different diagnosis.
 - C. Service Categories are: Inpatient; Outpatient, Pharmacy, Vision, Dental, Mental Health, and EPSDT.

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