



2120 L Street, NW, Suite 700
Washington, DC 20037

T 202.822.8282
F 202.296.8834

HOBBSSTRAUS.COM

MEMORANDUM

February 23, 2017

To: Tribal Health Clients

From: Hobbs, Straus, Dean & Walker LLP

Re: *Congress Seeks Input from States on Medicaid Reform*

As we have previously reported, Congress is in the process of crafting legislation to repeal and replace the Affordable Care Act (ACA) and reform Medicaid. We understand that Congress is currently in the process of reaching out to state governors to receive input on Medicaid reform. This provides an important opportunity for tribes to contact their state Medicaid officials and governors to request that they communicate to Congress the importance of ensuring that Medicaid reform remains consistent with carrying out the federal responsibility for Indian health care.

On February 16, 2017, House Republicans released their blueprint for health care reform, which included transitioning Medicaid to a per capita allocation system. Under this proposal, Medicaid payments to states would be capped based on a formula that takes into account the number of Medicaid enrollees in the state. The proposal provided, however, that states could choose to receive Medicaid funds in the form of a block grant instead. The details of the House Republicans' Medicaid reform plan, however, have yet to be established, providing an opportunity for states and tribes to weigh in to protect provisions of current law that are important to the Indian health care system.

In communicating with state Medicaid officials and governors' offices, the following points are important:

- **Responsibility for Indian health care is a federal responsibility that should not be shifted to the states.** The United States has a unique trust responsibility to provide for Indian health care. Medicaid is one way in which the federal government fulfills this obligation. Responsibility for Indian health care should not be shifted to the states by reducing federal Medicaid funding for American Indians and Alaska Natives (AI/ANs).
- **100% FMAP should be maintained.** The federal government provides 100% Federal Medical Assistance Percentage (FMAP) for Medicaid services received through an IHS or tribal facility. 100% FMAP is a critical source of funding for states that ensures Indian health care remains a federal responsibility. In enacting 100% FMAP, Congress noted that many states with large Native populations also have large amounts of public land and therefore a more limited tax base to fund health services, making it doubly unfair to shift the federal health obligation to

them. Any block grant or per capita allocation system should provide an exception for 100% FMAP for services received through an IHS or tribal facility.

- **Full Medicaid funding for AI/ANs is critical.** The Indian health care system depends on Medicaid reimbursements to fill the gap created by chronic underfunding of the Indian health system. However, Medicaid reimbursements for services received through an IHS or tribal facility represent only a fraction of one percent of total Medicaid funding. Any cap on Medicaid funding should provide an AI/AN exemption.
- **AI/AN protections should be preserved.** While increasing state flexibility, Medicaid reform should ensure that AI/AN protections are preserved. These include exemption from premiums and cost sharing; prohibition of classifying trust lands and items of cultural, religious, or traditional significance as resources for eligibility purposes; ability to designate an Indian health care provider as the primary care provider; ensuring prompt payment to an Indian health care provider; and provision of state wraparound payments to Indian health care providers in the event a managed care organization pays less than what would be paid under the state plan.

We are working with tribal clients to reach out to state Medicaid officials and governors' offices on these issues. Please let us know if you would like assistance. For more information, please contact Elliott Milhollin (202-822-8282 or emilhollin@hobbsstrauss.com), Geoff Strommer (503-242-1745 or gstrommer@hobbsstrauss.com), or Akilah Kinnison (202-822-8282 or akinnison@hobbsstrauss.com).