Tribal Partner Organizations Letter
In Support of Medicaid Equity for American Indians and Alaska Natives

September 11, 2021

Transmitted Electronically

The Honorable Frank Pallone
Chairman
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Sharice Davids
Chairwoman
House Native American Caucus
1541 Longworth House Office Building
Washington, DC 20515

Re: Medicaid Equity for American Indians and Alaska Natives

Dear Chairman Pallone and Chairwoman Davids,

On behalf of our undersigned organizations and the Tribal Nations that we serve, we write in strong support of efforts to fix the Medicaid coverage gap in the upcoming budget reconciliation package, as well as to highlight an opportunity to better deliver upon trust and treaty obligations to Tribal Nations via this change. Medicaid is a critical mechanism the federal government utilizes to fulfill its trust and treaty obligation to provide health care to American Indians and Alaska Natives (AI/AN). However, significant gaps remain in access to Medicaid for AI/AN, including substantially different eligibility and access to services based on where we reside. Fixing this coverage gap, which is broader than the gap that exists in non-Medicaid expansion states, has been a long-standing Tribal priority. As Congress considers policies designed to increase access to health coverage during the reconciliation process, including changing the administration of the Medicaid program, Tribal Nations and AI/AN people must be meaningfully included.

Medicaid and the Trust Obligation

The United States has a unique obligation to provide healthcare to AI/AN, founded in treaties and other historical relations with Tribal Nations, as well as reflected in numerous statutes and case law. This trust obligation and relationship has been solidified in law and policy and has become the cornerstone of federal Indian policy. Congress recognized this obligation over forty years ago by amending the Social Security Act to authorize Medicaid reimbursement for services provided within the Indian Health Service (IHS) and Tribally-operated healthcare facilities – further obligating CMS to ensure continued Medicaid access for individuals eligible to receive IHS services (IHS beneficiaries). Medicaid funding represents 67% of third-party revenue at IHS, and 13% of overall IHS spending. Due to chronic underfunding, these reimbursements are integral to the stability of Indian Healthcare System.

However, while the U.S. trust obligation to Tribal Nations applies equally to all federally recognized Tribal Nations, access to Medicaid is unequal, due to the significant variation in state administration of the program, including eligibility, covered services, and reimbursement rates. This is a failure in the execution of trust and treaty obligations, with some AI/AN and Tribal Nations having access to the program and its reimbursements while others do not. This inequity impacts both access to care, as well as the quality of care provided via the Indian Health System, since Medicaid and other third-party reimbursements must be re-invested into healthcare for AI/AN.

Support for Federal Medicaid Expansion
Indian Country has consistently supported Medicaid Expansion under the Patient Protection and Affordable Care Act (PPACA), as an opportunity to improve access to care for AI/AN, as well as increase vital third-party reimbursements to the Indian Health System. Since the Supreme Court decision holding that Medicaid Expansion is optional, Indian Country has been instrumental in expansion efforts at the state level, including recent referendum efforts in non-expansion states. Now, more than a decade since the passage of PPACA, 12 states, 11 of which include Tribal Nations and all of which include AI/AN people, have yet to expand. With this in mind, we are strongly supportive of proposals currently being considered as a part of the reconciliation package, including the Medicaid Saves Lives Act, that would close this coverage gap for all eligible Americans residing in these states by creating a federally administered program for the expansion population. If enacted, this would undoubtedly have positive impacts on Tribal Nation health systems and the AI/AN expansion population in these states.

However, those impacts could be significantly lessened to the extent federal administration is contracted out to third parties without the necessary Indian protections included. As you may know, Indians have not fared well as a whole in Medicaid managed systems, requiring Congress to impose Indian Medicaid managed care protections in the 2009 American Recovery and Reinvestment Act. Those protections are found in Section 1932(h) and should be made applicable to any managed care entity responsible for administering the program.

Equal Access for AI/AN is more than Expansion
Despite the positive impacts of full expansion, however, a gap for AI/AN people will continue to exist in the form of variations in covered services and reimbursement rates between states. In pursuit of health equity for all AI/AN, in fulfillment of trust and treaty obligations, many of our organizations have supported amendments designed provide equal access to the Medicaid program, regardless of the state in which we reside. These include authorizing Medicaid reimbursements for all Qualified Indian Health Care Provider services regardless of whether they are covered in a State plan and ensuring that services delivered beyond the 'four walls' are eligible for reimbursement.

Qualified Indian Health Care Provider Services would authorize IHS and Tribal programs to bill Medicaid for optional services as well as services authorized in the Indian Health Care Improvement Act regardless of whether they are approved in a Medicaid State plan. Currently IHS and Tribal health programs can only bill for optional services that a state elects to include in its state plan, which means the IHS and Tribal health programs in some states can bill for more services than IHS and Tribal Nations in other states. The Qualified Indian Health Care Provider Service provision would put an end to this uneven and unfair administration of the federal trust responsibility by ensuring all IHS and Tribal programs can bill for the same set of services.

In addition, we note that the possibility of a fully federal Medicaid program presents an opportunity to ensure that the administration of Medicaid better reflects the trust obligation to AI/AN, while fixing some issues with inequitable access. As you know, the trust obligation to provide health care rests solely with the federal government and yet, states, although they do not share in this obligation, are currently permitted to dictate much of the program's administration. If a separate federally managed Medicaid program option were available to all eligible AI/AN (and not merely those residing in non-expansion states) and developed in consultation with Tribal Nations, this would significantly improve parity in access to Medicaid by providing a single set of covered services and reimbursement rates[1]. And it would appropriately reflect the unique relationship that exists between the U.S. and Tribal Nations.

[1] We note that this option would be in addition to existing state Medicaid benefits, so that those AI/AN accessing a program with more generous benefits would not be limited to the essential health benefits minimums required by the program.

Conclusion

While we strongly support the closure of the Medicaid coverage gap for all Americans, we underscore the inequitable variation of the program for AI/AN people, to whom the U.S. has unique trust and treaty obligations. As the drafting of the reconciliation package proceeds, we urge the inclusion of provisions designed to provide equal access to the Medicaid program for AI/AN, in fulfillment of these obligations. We appreciate your consideration of this request and look forward to working together to ensure the reconciliation package reflects Indian Country's priorities for COVID-19 recovery and beyond.

Sincerely,

Alaska Native Health Board
National Congress of American Indians
National Council of Urban Indian Health
National Indian Health Board
Northwest Portland Area Indian Health Board
Self-Governance Communication and Education Tribal Consortium
United South and Eastern Tribes Sovereignty Protection Fund