



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

T 202.822.8282  
F 202.296.8834

HOBBSSTRAUS.COM

## MEMORANDUM

July 31, 2014

To: Tribal Health Clients  
From: Hobbs, Straus, Dean & Walker, LLP  
Re: *Report on MMPC and TTAG Meetings*

---

The Medicare Medicaid Policy Committee (MMPC) and the Tribal Technical Advisory Group (TTAG) held meetings in Washington, D.C. on July 15-16, 2014. Following is a summary of highlights from both meetings, starting with reports from Administration officials.

### **I. Summary of Presentations by Administration Officials**

#### *CMCS Administrator Cindy Mann*

Cindy Mann, Director of the Center for Medicaid and CHIP Services (CMCS) within the Centers for Medicare and Medicaid Services (CMS), expressed her appreciation for the TTAG on its tenth anniversary. She reiterated her support of TTAG and its value to CMS. Ms. Mann stated that CMS will develop a tracking chart that will list all issues TTAG raises with CMS, the status of those issues, and how they have been resolved. Ms. Mann stated that development of the TTAG strategic plan and budget request is helpful to CMS. She noted that CMS was able to fund TTAG at \$4 million in 2014 and that she expected the tribal affairs budget to be maintained in 2015 despite broader Health and Human Services (HHS) cuts.

Regarding insurance enrollment, Ms. Mann reported that open enrollment resulted in many more people getting coverage through the Exchanges but that CMS does not yet have data on American Indian and Alaska Native (AI/AN) enrollment. Ms. Mann stated she recognized the importance of enrollment assistance and announced CMS is in the process of reviewing grant applications for the \$4 million in Children's Health Insurance Reauthorization Program (CHPRA) funds. She also noted CMS has been able to expand the uses of CHPRA funds to include families of children.

Ms. Mann stated that CMS has enrolled an additional 6.7 million people in Medicaid. States that expanded Medicaid saw a 17 percent rise in enrollment while states that did not saw a 3 percent rise. Ms. Mann noted that most states that have expanded Medicaid have done so through SPAs but that three states (Iowa, Arkansas, and Missouri) have used waivers. She also stated that Indiana and Pennsylvania are seeking waivers as

well and that many states moving forward with expansion will be doing so with waivers. Ms. Mann expressed that she wants to work with the TTAG, praising the work of the TTAG Waivers Subcommittee and its effort to develop Indian Standard Terms and Conditions to be used in waivers.

Valerie Davidson listed a number of issues and requests for CMS. She asked CMS to maintain Indian protections in existing Medicaid waivers and to consider the Indian Standard Terms and Conditions being developed by the TTAG. She also asked CMS to consider exempting Indians from Medicaid estate recovery. Ms. Mann stated CMS's lawyers have concluded CMS does not have authority to issue a blanket exemption for Indian estate recovery but that States may do this and that CMS has encouraged them to do so. Ms. Davidson also asked CMS to make enrollment and outreach assistance available to each Indian Health Service, Tribal organization, or Urban Indian Organization (I/T/Us). She also requested additional resources be made available to the Tribal Affairs Group and to refocus that Group more on policy rather than only outreach.

*CCIIO Acting Director Jackie Garner*

Jackie Garner, the new Acting Director of the Center for Consumer Information & Insurance Oversight (CCIIO), stated that CCIIO would also be developing a chart for tracking TTAG issues. She reported CCIIO has stopped asking individuals for their Social Security numbers and has rewritten call center scripts and will share them with the TTAG as soon as they are available. She pledged to keep working with the TTAG on these issues. Ms. Garner stated that CCIIO is working to improve open enrollment for 2014 and that it recognizes that many errors were made regarding Indian enrollment in 2014.

With regard to CCIIO, Ms. Davidson requested CCIIO require qualified health plans (QHPs) to describe the zero- and limited-cost sharing plans for Indians in their statements of benefits and coverage. She also requested enrollment data from CCIIO when it is made available. Ms. Davidson also requested that a federal hub be used for enrollment, noting that CCIIO continues to make many mistakes processing exemptions from the Affordable Care Act's (ACA) tax penalty for failure to obtain health insurance coverage. Ms. Davidson further insisted that CCIIO enforce the requirement in the 2015 Issuer Letter that all QHPs offer to contract with I/T/Us, using the Indian Addendum. She stated that in 2014 failure to contract with I/T/Us and use the Indian Addendum has been a real problem. Finally, Ms. Davidson reiterated the request that the Internal Revenue Service be able to process hardship exemptions.

CMS Medical Officer Dr. Eugene Freund reported that CCIIO required attestation of offers to contract with I/T/Us in 2014 and will in 2015 as well. He stated that QHPs

are attesting that they have done so and that if they are not offering contracts with I/T/Us that CCIIO would like to hear about it. Jim Roberts asked whether CCIIO could monitor when tribes report a QHP has refused to offer a contract in good faith using the Indian Addendum. Dr. Freund stated CCIIO has the ability to police this on a case-by-case basis. Ms. Davidson noted that if CCIIO were to address this issue once in a highly visible manner, QHPs would be encouraged to comply with the requirement.

*CMS Division of Tribal Affairs Report*

Kitty Marx, Director of CMS's Division of Tribal Affairs, stated that CMS does not yet have 2015 budget numbers but expects they will be similar to 2014. She stated CMS does not expect any reductions and reported that CMS has asked for an increase for ACA outreach and enrollment.

Ms. Marx stated that tribal and urban Indian programs will be able to customize Medicaid brochures for individual tribal programs.

Ms. Marx also reported that the Indian Health Service (IHS) and CMS have received a request from the Office of Management and Budget (OMB) to provide Medicare and Medicaid collections data from tribal health programs. She stated that the Indian Health Care Improvement Act (IHCIA) requires reporting provider numbers to CMS. Tribal representatives pushed back on this issue, noting that the IHCIA only requires tribes to report on the source, not the amount, of third-party revenues and that the IHCIA prevents Congress from offsetting the IHS budget with third-party collections.

*Additional CMS Updates*

Cara James, Director of the Office of Minority Health provided an overview of the Coverage to Care Program, which is an information outreach program from HHS designed to introduce individuals to the health care system. The Program provides information about health care coverage options and how health insurance works.

Dr. Stephen Cha, Chief Medical Officer for CMCS, reported on the Medicaid Innovation Accelerator Program, which is designed to explore new models for Medicaid care delivery and payment reform. He committed to working further with the TTAG to explore ways in which the Medicaid Innovation Program can be used to help tribal health programs.

Sarah Spector, Technical Director for CMS's Division of Eligibility, Enrollment and Outreach reported CMS recently took the position in a final rule that States may, but are not required to, consider students residing in the state for the purpose of attending school as state residents for the purpose of Medicaid eligibility. She stated CMS has not

made this mandatory out of concern for states with large low-income, out-of-state student populations. Ms. Spector stated CMS is open to considering alternatives to address Indian specific issues and requested specific recommendations from the TTAG.

*Marketplace Enrollment Data Report*

Emily Gee, from the Office of Health Policy for the Assistant Secretary for Planning and Evaluation (ASPE), provided an overview of AI/AN enrollment. Carolyn Angus-Hornbuckle provided an overview of the National Indian Health Board's (NIHB) Marketplace Research project, which is designed to evaluate the efficacy of tribal and federal outreach efforts regarding the ACA.

*TTAG Leadership Changes*

Valerie Davidson, who had served as the Chair of the TTAG throughout its ten year history, is stepping down. The TTAG elected Ron Allen as Chair, Dee Sabattus as Co-Chair, and Jerilyn Church as Secretary.

**II. Summary of MMPC Action Items**

*Update on Briefing Document for New HHS Secretary Burwell*

A briefing document for the new Secretary of Health and Human Service Sylvia Burwell will be finalized and sent shortly, and a meeting with Secretary Burwell has been requested. The objective this meeting will be to brief the Secretary on the Secretary's Tribal Advisory Committee (STAC) and to communicate the priorities TTAG is now communicating to CMS.

*Marketplace Enrollment & Exemption Process Issues*

MMPC Members gave updates on a number of issues facing their regions. Insurance enrollment numbers remain low, but take-up rates remain difficult to analyze in a meaningful way and there remains a need for better data. In some areas there has been an increase in Medicaid enrollment. However, some tribes and tribal members remain resistant to the idea of purchasing insurance, viewing health care as a part of the federal trust responsibility.

MMPC participants also stated that they continue to have problems with tribal members being granted the incorrect exemption, with tribal members being granted a hardship exemption.

*Navajo Nation Medicaid Agency Feasibility Report to Congress*

Some MMPC participants requested that TTAG ask CMS for further information regarding the data used in the Navajo Nation Medicaid Agency Feasibility Report. For instance, there were concerns that the Report states that an extremely high percentage of persons on the Navajo Nation go to non-Indian health providers to receive services and that this data may not have included data from the state of Arizona. There was concern that the methodology and data from the report includes assumptions that will be significant down the line.

*Promotional Materials Targeting Elders*

IHS has created brochures, placemats, and other materials that seek to provide information on ACA enrollment to Native elders. Concern was expressed that although the materials were very well done graphically, some of the information was unclear. It was suggested that a sheet of talking points be sent to Health Directors along with the materials to help staff prepare to answer questions from elders.

*ACA Policy Subcommittee*

A referral and payment table has been submitted to CMS, but they are likely not interested in using this table. Participants indicated they would like to see this table used online at some future date. IHS currently has a draft and will come back to the ACA Policy Subcommittee to share that draft when it is ready.

QHPs with cost-sharing variations for AI/ANs were also discussed. IHS representatives were asked how much engagement IHS has had with educating insurance providers on the Indian-specific provisions, and IHS representatives stated they would look into the matter. The need for technical assistance for facilities was also raised, with participants pointing out that some hospitals are not equipped to bill providers. Concerns were also raised about getting insurers to use the Indian Addendum and the need to talk with CCIIO about how QHPs demonstrate they have offered contracts to Indian health care providers. IHS representatives stated that they have not heard of situations where providers refuse to use the Addendum and that they believe it is mandatory based on the Issuer Letter. However, tribal representatives from across the country noted that many providers are still refusing to use the Addendum.

Tribal representatives also reported a number of problems with issuers denying payments and the need to enforce Section 206 of the IHCA, which provides a right of recovery from certain third parties such as insurance companies, health maintenance organizations, and others. Tribal representatives stated that the TTAG ACA Policy Subcommittee could be used to address this issue and that it should try to have a meeting during the NIHB meeting in two months to develop a work plan.

*Section 1115 Waiver Subcommittee Update*

Many States are using the Section 1115 waiver demonstration authority to fundamentally change their Medicaid programs. The TTAG has formed a Section 1115 Waiver Subcommittee to help advocate for tribal issues with regard to waivers with CMS. The Subcommittee has two goals: (1) to expand the use of tribal uncompensated care waivers, and (2) to ensure that Indian-specific Medicaid protections are not waived when CMS approves waivers submitted by State Medicaid plans. The Waiver Subcommittee has been tasked with developing a set of standard Indian-specific standard terms and conditions that could be used by CMS in each waiver it approves and that would ensure that Indians are not forced into managed care systems, and that other Indian-specific Medicaid protections are upheld. Elliott Milhollin of our office is taking the lead on that effort, working with the Subcommittee.

**Conclusion**

If you have any questions, please contact Elliott Milhollin at (202) 822-8282 or [emilhollin@hobbsstrauss.com](mailto:emilhollin@hobbsstrauss.com) or Geoff Strommer at (503) 242-1745 or [gstrommer@hobbsstrauss.com](mailto:gstrommer@hobbsstrauss.com).

**Memorandum**

July 31, 2014

Page 7