Memorandum

To: NIHB Board of Directors and Member Organizations
From: NIHB
Date: January 12, 2018
Re: CMS Issues State Medicaid Director Letter Announcing New Policy that Promotes Work Requirements as a Condition of Medicaid Eligibility

Introduction

On January 11, 2018, the Centers for Medicare and Medicaid Services (CMS) issued a Dear State Medicaid Director (SMD: 18-002) letter, entitled RE: Opportunities to Promote Work and Community Engagement Among Medicaid Beneficiaries. This new policy supports states mandating work requirements through Section 1115 waivers as conditions of eligibility for the Medicaid program. The new guidance was created without Tribal consultation despite repeated requests from Tribes. Tribes have been universally opposed to the imposition of Medicaid work requirements for American Indians and Alaska Natives as it will reduce access to Medicaid resources which are critical to supplementing the chronically underfunded Indian health system.

Until now, CMS has never approved a Section 1115 waiver that included mandatory work requirements. Today, CMS approved a Medicaid waiver out of the state of Kentucky that force some adults to work up to 20 hours per week in order to be eligible for Medicaid. While Kentucky does not have any federally recognized Tribes, NIHB has heard concerns from Tribes that the waiver approved by CMS could set a precedent for other waiver requests pending review at CMS as well as for future waiver applications that have yet to be developed. There was no Tribal consultation on the Kentucky waiver.

Overview of SMD Letter

The SMDL guidance encourages states to consider proposals that will allow them special authority to require participation in work or community engagement as a condition of eligibility or coverage, among working-age, non-pregnant adult Medicaid beneficiaries who qualify for Medicaid on a basis other than disability. Once an 1115 waiver has been approved, states can rely on support from CMS to use their Medicaid program as an incentive for adult Medicaid beneficiaries to participate in work or community engagement activities.

CMS will also support states’ efforts to align their work requirements similar to TANF or SNAP benefits. States will also have the authority to grant exemptions to identified groups and might
also consider Tribal employment program participation a met condition of participation for work or community engagement.

1115 Demonstration Waivers will remain subject to Tribal Consultation requirements. Descriptions must be provided by the state on how they have responded to comments such as those submitted by Tribes. Also, under the CMS Tribal Consultation Policy, Tribes have the right to invoke Tribal Consultation with CMS at any time.

Discussion

NIHB has been in communication with CMS delineating the Tribal position that Medicaid work requirements will not work as intended in Indian Country. Tribes have estimated that the reduction in enrollment in Medicaid as a result of state defined mandatory work requirements will result in a significant loss of resources. This is inconsistent with Congress’s intent that Medicaid be used to supplement IHS resources, and will instead shift costs from Medicaid to the IHS.

On June 13, 2017, NIHB submitted a letter to Administrator Verma and then Secretary Price, outlining Tribal opposition to Work Requirements. On July 15, 2017 NIHB submitted comments to CMS in response to a waiver application submitted by the state of Wisconsin which seeks to implement work requirements and health screenings as conditions of Medicaid eligibility, such as work requirements. The Senior Counselor to the CMS Administrator, Calder Lynch has confirmed that CMS has received letters submitted by the NIHB and expressed the administration’s commitment to continue discussing this issue with the Tribes.

Background

On March 14, 2017, the Department of health and Human Services (HHS) and CMS issued a joint letter to state governors informing them of the administration’s commitment to give states more authority and grant them additional flexibilities for how states choose to administer their respective Medicaid programs. CMS has cited Section 1115 of the Social Security Act as the authority which gives states the freedom to test and evaluate approaches that will improve quality, accessibility, and health outcomes in a cost-effective manner.

Since March, 10 states have submitted 1115 waivers that include mandatory work requirements but none have been approved until today (Kentucky). Throughout the process, NIHB has been coordinating with Tribes as they work with their state to get AI/AN exemptions. Currently, Utah, Arkansas, Arizona, and Indiana have agreed to exempt AI/AN from work requirements. Tribes are in discussions with other States to achieve the same outcome (Wisconsin and Maine).

Next Steps

- Monitor what states are doing and ensuring that Tribal Consultation is taking place prior to the approval of any state waivers that impose working requirements on AI/AN
• Continue to press CMS and HHS leadership on the unique political status of AI/ANs and the importance of Medicaid resources to the Indian health system (talking points are attached)