

# National Indian Health Board

July 15, 2017

Administrator Seema Verma  
Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

**Re: Wisconsin Badger Care Reform Application**

Dear Administrator Verma:

On behalf of the National Indian Health Board (NIHB)<sup>1</sup> and the 567 Federally recognized Tribal Nations that we serve, I write today in response to a waiver application submitted by the state of Wisconsin that, should it be approved in its current form, would have a significant and detrimental impact on American Indians and Alaska Natives (AI/AN) in that state.

NIHB supports the Tribes in Wisconsin in their effort to work with the state to achieve goals beneficial to the people in Wisconsin, however, we are seriously concerned that unless certain exceptions are made the changes imposed by the Badger-Care Waiver Amendment would be inconsistent with existing statutory protections for American Indians and Alaska Natives (AI/ANs) in the Social Security Act.

The Badger Care Amendment seeks to encourage healthy behaviors by imposing new conditions of eligibility such as premiums and cost sharing and/or work requirements on Medicaid enrolled individuals in the new adult group. While imposing such conditions may be appropriate for Wisconsin's non-Indian population, they will not work as intended for AI/ANs in Wisconsin because the incentives are not the same. Faced with meeting these requirements as a condition of Medicaid eligibility, AI/ANs will simply elect not enroll in Medicaid and rely on the Indian Health Service (IHS) instead. This will lead to more uncompensated care provided to otherwise Medicaid eligible individuals by the IHS, Tribes, and non-Indian healthcare providers. Instead of incentivizing healthy behaviors and employment, such requirements will lead to decreased Indian access to the Medicaid program, a result at odds with congressional intent.

It will also lead to increased burdens on the Indian health system and non-Indian hospital providers. Due to inadequate funding, the Indian health system is unable to provide the full scope of medical

---

<sup>1</sup> Established in 1972, NIHB is an inter-Tribal organization that advocates on behalf of Tribal governments for the provision of quality health care to all American Indians and Alaska Natives (AI/AN). The NIHB is governed by a Board of Directors consisting of a representative from each of the twelve Indian Health Service (IHS) Areas. Each Area Health Board elects a representative to sit on the NIHB Board of Directors. In areas where there is no Area Health Board, Tribal governments choose a representative who communicates policy information and concerns of the Tribes in that area with the NIHB. Whether Tribes operate their entire health care program through contracts or compacts with IHS under Public Law 93-68, the Indian Self-Determination and Education Assistance Act (ISDEAA), or continue to also rely on IHS for delivery of some, or even most, of their health care, the NIHB is their advocate.

care needed by the AI/ANs it serves. As a result, IHS operates a Purchased/Referred Care (PRC) program through which needed care is purchased from public and private providers. Funding for PRC is limited, and as a result access to outside care is severely rationed and many patient care needs go unfilled. Medicaid coverage is a critical resources needed to supplement this program. Eliminating barriers to access Medicaid eligibility helps save federal funding in the PRC program, which in turn makes additional federal funds available to cover the costs of care for non-IHS hospital providers and emergency departments that may otherwise go uncompensated.

American Indian and Alaska Native (AI/AN) Medicaid beneficiaries are unique among Medicaid enrollees in that they also have access to Indian Health Service (IHS). As a result, the employment incentive structures created by Medicaid work requirements do not operate in the same way for AI/AN Medicaid beneficiaries who may forgo Medicaid coverage and rely instead on IHS coverage. This, in turn, will strain the underfunded IHS system. As a practical matter, many AI/AN Medicaid beneficiaries may not be able to meet Medicaid work requirements due to high on-reservation unemployment and/or lack of connection to State employment programs. Many AI/ANs look to their Tribal governments for employment assistance rather than their state and as a result will not be able to demonstrate they are participating in State employment assistance programs. Finally, imposing work requirements on AI/AN Medicaid beneficiaries is inconsistent with the federal trust responsibility and congressional intent to increase Indian health system access to Medicaid resources.

The Social Security Act exempts AI/ANs from premiums, copays, and cost-sharing of any kind in the Medicaid program.<sup>2</sup> We appreciate that the Badger Care Amendment specifically exempts AI/ANs from the premiums required for Transitional Medical Assistance (TMA) adults with incomes between 100 and 133 percent of the Federal Poverty Level. However, the waiver says that “cost-sharing must be in compliance with Medicaid requirements that are set forth in statute, regulation and policies and be reflected in the state plan.” This includes the special cost-sharing exemptions for AI/ANs in Section 1916(j) of the Social Security Act; 42 U.S.C. § 1396o(j).

As a result, AI/ANs must be exempt from the premiums imposed by the Badger Care Amendment. NIHB understands Wisconsin’s goal in imposing premiums as a way to educate Badger Care enrollees about private health coverage, but we remind the State and the Centers for Medicare and Medicaid Services (CMS) that this goal will not work for AI/ANs in Wisconsin. Even the addition of a \$1 monthly premium, as low as it may be, may discourage AI/ANs from enrolling in Medicaid. AI/ANs will simply rely on IHS rather than enroll in Medicaid, increasing costs to both the Indian health care system and non-Indian hospital providers. Congress specifically exempted AI/ANs from premiums and cost-sharing<sup>3</sup> and the Badger Care Amendment must do the same in all its provisions.

In addition to addressing the issues above, NIHB also requests that the Badger Care Amendment (if approved) include the Tribal Standard Terms and Conditions (STCs) that the CMS Tribal Technical Advisory Group (TTAG) has developed with CMS. These STCs outline a series of existing statutory protections for AI/AN and IHS and Tribal health programs in Medicaid and are

---

<sup>2</sup> 42 U.S.C. § 1396(j)

<sup>3</sup> 42 U.S.C. § 1396o(j)(A)

a helpful tool in implementing those provisions. They are intended to be a menu from which the State, CMS, and Tribes can use to include provisions in the STCs of any approved waiver.

In conclusion, NIHB supports the Tribes in Wisconsin in their effort to work with the state to achieve goals beneficial to the people in Wisconsin, however changes must be made to the Badger-Care Amendment before it is approved. In addition, consistent with the CMS Tribal Consultation Policy, meaningful Tribal consultation must take place before the Badger Care Reform application is approved. NIHB stands ready to provide any technical assistance that may be required.

Sincerely,

A handwritten signature in cursive script that reads "Vinton Hawley".

Vinton Hawley  
Chairman  
National Indian Health Board

Cc:

Kitty Marx, Director, Division of Tribal Affairs  
Judith Cash, Director, State Demonstrations Group