National Indian Health Board

Submitted via: https://medicaid.gov

August 18, 2018

Administrator Seema Verma
Administrator, Centers for Medicare and Medicaid Services (CMS)
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

RE: Comments on Kentucky's demonstration project "Kentucky Helping to Engage and Achieve Long Term Health (KY HEALTH)" and its component parts

On behalf of the National Indian Health Board (NIHB)[1] and the 573 federally recognized Tribal Nations that we serve, I am submitting additional comments to the Centers for Medicare and Medicaid Services (CMS) on Kentucky's demonstration project "Kentucky Helping to Engage and Achieve Long Term Health (KY HEALTH)" and its component parts, including the Kentucky HEALTH program. In light of the district court's decision in *Stewart v. Azar*, No. 18-152 (D.D.C. June 29, 2018), CMS has provided a 30-day federal public comment period on (1) Kentucky's original demonstration proposal from August 24, 2016, (2) Kentucky's revised proposal from July 3, 2017, and (3) the special terms and conditions (STCs) that CMS approved on January 12, 2018.

As you know, the NIHB opposes mandatory Medicaid work and community engagement requirements for Indian Medicaid enrollees because of the challenges American Indians and Alaska Natives (AI/AN) already face in achieving adequate medical coverage. If approved, this demonstration project would have a significant and detrimental impact on AI/AN who reside in the Commonwealth.

[1] 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.

The United States has a trust and treaty based responsibility to provide access to health care for American Indians and Alaska Natives, and that responsibility includes ensuring access to federal health programs like Medicaid. Congress has declared that "it is the policy of this Nation, in fulfillment of its special trust responsibilities and legal obligations to Indians … to ensure the highest possible health status for Indians and urban Indians and to provide all resources necessary to effect that policy."[2]

This trust responsibility is highlighted in the Department of Health and Human Services (HHS) Strategic Plan FY 2018 - 2022,

> Importantly, the Federal Government has a unique legal and political government-to-government relationship with Tribal governments and a special obligation to provide services for American Indians and Alaska Natives based on these individuals' relationship to Tribal governments.[3]

While there are no federally recognized Tribes in Kentucky, HHS and CMS have a duty to advance these objectives when administering the federal healthcare programs they oversee, for all Tribal members. This trust responsibility and the federal laws enacted to carry it out not only permit CMS to treat those served by the Indian health system as unique Medicaid enrollees entitled to special accommodation and treatment, they require it.

In making these comments, we remind you that AI/AN are among the nation's most vulnerable populations. It is critically important that CMS and HHS provide a blanket exemption for all AI/AN from any mandatory Medicaid work and community engagement requirements, including Kentucky's programs.

CMS has ample legal authority to make accommodations to ensure that work and community engagement requirements do not pose a barrier to access to Medicaid for IHS beneficiaries when exercising administrative discretion in reviewing Kentucky's demonstration project. CMS has made such accommodations in the past when exercising administrative discretion in the absence of a statute, and must do so once again.

In conclusion, changes must be made to Kentucky's demonstration project before it is approved by CMS. NIHB stands ready to provide any technical assistance that may be required.

Sincerely,

Vinton Hawley
Chairman, National Indian Health Board

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[2] 25 U.S.C. § 1602(a)(1).
[3] Introduction, "Cross-Agency Collaborations", https://www.hhs.gov/about/strategic-plan/introduction/index.html