National Indian
Health Board

Submitted electronically though www.medicaid.gov

October 21, 2018
Administrator Seema Verma
Centers for Medicare and Medicaid Services
200 Independence Ave SW
Washington, DC, 20101

RE: Comments on the State of Alabama Medicaid Workforce Initiative Section 1115 Demonstration Application

Dear Administrator Verma:

On behalf of the National Indian Health Board (NIHB)[1] and the 573 federally recognized Tribal Nations that we serve, I am submitting comments to the Centers for Medicare and Medicaid Services (CMS) on Alabama's demonstration project "Alabama Medicaid Workforce Initiative" and its component parts, including the Alabama Medicaid program. Alabama is seeking approval within the demonstration project to require unemployed or underemployed able-bodied Parents or Caretakers Relatives (POCRs) to become gainfully employed, or participate in employment related activities such as: job search, training, education, vocational or volunteer opportunities to enhance their chances of full-time employment.

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 state of Alabama and provide a dangerous precedent for other states to follow suit. Currently, the Alabama Medicaid Workforce Initiative does not list AI/AN under the exceptions to the employment requirements.

The United States has a trust and treaty based responsibility to provide access to health care for

[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.

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 the Poarch Band of Creek Indians are the only federally recognized Tribe in Alabama, 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 and that Medicaid plays a critically important role in extending valuable resources to the chronically underfunded Indian health system which serves IHS beneficiaries.[4] As a result, it is critically important that CMS and HHS provide accommodations for IHS beneficiaries from any mandatory Medicaid work and community engagement requirements, including Alabama's programs, consistent with the United States' trust and treaty responsibility to Tribal nations.

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 Alabama'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 Alabama's demonstration project before it is approved by CMS. NIHB stands ready to provide any technical assistance that may be required.

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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
[4] Unlike other Medicaid enrollees, AI/ANs have access to IHS services to fall back on at no cost to them. As a result, unlike other Medicaid enrollees, they can and will simply elect not to participate in Medicaid if eligibility is tied to state-imposed work requirements. In this way, work requirements will have a unique effect on AI/AN Medicaid enrollees alone that will, in turn, deny the Indian health system Medicaid funding Congress intended it to receive through Section 1911 of the Social Security Act.

Sincerely,

Vinton Hawley
Chairman, National Indian Health Board