National Indian Health Board

Submitted via Medicaid.gov

October 28, 2020

The Honorable Seema Verma
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Ave SW
Washington, DC 20101

Re: Missouri Section 1115 Demonstration Waiver

Dear Administrator Verma:

On behalf of the National Indian Health Board (NIHB),[1] I write in support of Missouri's Medicaid section 1115 demonstration waiver, which seeks to allow former foster care youth under the age of 26, who are residents of the state and received Medicaid while in foster care, to enroll in Medicaid. We applaud Missouri's decision to extend eligibility to those who were in foster care under the responsibility of any state and Tribe. The inclusion of Tribes represents an important recognition of sovereignty and an extension of opportunity for Tribal members who may have to move to Missouri for various reasons. We urge the agency to approve this waiver.

Trust Responsibility

United States owes a special duty of care to Tribal Nations, which animates and shapes every aspect of the federal government's trust responsibility to Tribes. Rooted in treaties and authorized by the United States Constitution, the federal government's unique responsibilities to Tribal Nations has been repeatedly re-affirmed by the Supreme Court, legislation, executive orders and regulations.[2] In 1977, the Senate report of the American Indian Policy Review Commission stated that, "[t]he purpose behind the trust doctrine is and always has been to ensure the survival and welfare of Indian tribes and people." This trust responsibility is highlighted most recently in the Department of Health and Human Services (HHS) Strategic Plan FY 2018–2022:

[1] Established in 1972, the National Indian Health Board (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/ANs). 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 93-638, 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.

[2] The Court has consistently held that the federal government has a trust responsibility to Tribes, which has formed the foundation for federal/Tribal relations. *See* Seminole Nation v. United States, 316 U.S. 286 (1942), United States v. Mitchell, 463 U.S. 206, 225 (1983), and United States v. Navajo Nation, 537 U.S. 488 (2003).

> 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]

Congress recognized this unique relationship and duty when it authorized, and CMS implemented the 100% FMAP rule for services received through IHS and tribal providers.[4] It provides that the federal government is solely responsible for paying for the care of AI/ANs Medicaid beneficiaries receiving services at Indian Health Service (IHS) and Tribal clinics.

By approving this waiver, CMS would be recognizing the additional economic barriers that former foster children face and helping to remove one of the most insurmountable, access to affordable health care.

Foster Care and Tribal Populations

While Missouri is not home to any federally recognized Tribes, most recent Census estimates say that 0.6% of their population is AI/AN[5]. Missouri also borders Oklahoma, Iowa, Kansas, and Nebraska, which have federally recognized Tribes. The Kansas City metropolitan area even extends into Kansas. We support the state's decision to allow those who received foster care from a Tribe and received Medicaid while doing so to receive Medicaid in Missouri until the age of 26. Former recipients of foster care are among the most economically vulnerable people in this country. Research has shown that foster children who age out of the system are more likely to experience homelessness and housing instability than similarly aged people who were not in the foster care system.[6]

According to the National Indian Child Welfare Association, AI/AN children are represented in foster care at a rate that is 2.7 times greater than their portion of the general population.[7] Missouri's neighboring states of Nebraska and Iowa have among the highest disproportionality rates in the country. We believe that the elimination of this barrier will help former foster youth transition into adulthood. Allowing this population to receive Medicaid will allow them to regularly visit doctors, ensure that they are maintaining good health, and establish habits that are likely to last a lifetime. It will ensure that they receive care when they are sick without having to worry about figuring out how they will afford it. This is an issue of particular importance to AI/AN populations and we applaud for Missouri for recognizing this and including Tribal populations in this waiver.

It will also benefit the Indian health system if an enrollee returns home to their Tribal community and needs emergency care during their stay. As you may know, the Indian health system is chronically underfunded. The opening of another avenue for receiving third party revenue will

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[3] Introduction, "Cross-Agency Collaborations", https://www.hhs.gov/about/strategic-plan/introduction/index.html
[4] The FMAP refers to the share of the payment to the state by the federal government.
[5] *See* https://www.census.gov/quickfacts/fact/table/MO/POP060210
[6] Fowler PJ, Toro PA, Miles BW, Am J Public Health. 2009 Aug; 99(8):1453-8. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2707485/
[7] National Indian Child Welfare Association, "Disproportionality Table," Sept. 2017 https://www.nicwa.org/wp-content/uploads/2017/09/Disproportionality-Table.pdf

allow the Indian health system to recoup the cost of providing care without having to stretch their already limited budgets.

Conclusion

NIHB supports this waiver and we urge CMS to approve it. We believe that this will be an important step towards eliminating an important barrier faced by former foster youth. This will eliminate the barrier of cost and allow them to receive health care when they need it. It will also benefit the Indian health care system in other states, which may see an increase in third party revenue if the enrollee decides to return home and needs emergency care. Thank you in advance for your consideration of our comments.

Sincerely,

Stacy A. Bohlen

CEO

National Indian Health Board