

RESOLUTION OF THE
NAABIK'IYATI' COMMITTEE OF THE
NAVAJO NATION COUNCIL

23RD Navajo Nation Council---Second Year, 2016

AN ACTION

RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES AND
NAABIK'ÍYÁTI'; SUPPORTING COMMENTS SUBMITTED BY THE TUBA CITY
REGIONAL HEALTH CARE ON ARIZONA'S APPLICATION FOR A NEW SECTION
1115 DEMONSTRATION

WHEREAS:

- A. The Navajo Nation established the Health, Education, and Human Services Committee as a standing committee of the Navajo Nation Council. 2. N.N.C. § 400(A).
- B. The Health, Education, and Human Services Committee is empowered to establish Navajo Nation policy, promulgate rules and regulations concerning health. 2 N.N.C. §401(B)(1).
- C. Statements of policy are written statements submitted to federal, state or local governments by a Navajo Nation official stating the official position of the Navajo Nation on proposed legislation or other action by that government. 2 N.N.C. § 100(W).
- D. The Navajo Nation established the Naabik'íyáti' Committee as a Navajo Nation Council standing committee and as such empowered Naabik'íyáti' Committee to "coordinate all federal, county, and state programs with other standing committees and branches of the Navajo Nation government to provide the most efficient delivery of services to the Navajo Nation". 2 N.N.C. § 701 (A)(4); 2 N.N.C. § 700 (A).
- E. Arizona ranks high among states with Indians living below the poverty level. See, 2013 *American Indian Population and Labor Force Report*, U.S. Department of the Interior, Office of the Secretary Office of the Assistant Secretary. Indians are among the poorest citizens in the state of Arizona. As such, adequate health care to Indian people is a major concern.

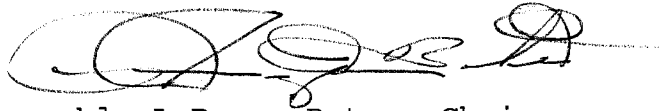
- F. Medicaid provides health coverage to millions of Americans, including eligible low-income adults, children, pregnant women, elderly adults and people with disabilities. Medicaid is administered by states, according to federal requirements, and it is funded jointly by states and the federal government. *Medicaid.gov*. Section 1115 of the Social Security Act gives the Secretary of the Health and Human Services authority to waive certain Medicaid requirements.
- G. The Arizona Health Care Cost Containment System (AHCCCS) program of the state of Arizona on September 30, 2015 submitted to the U.S. Department of Health and Human Services an application for a "New Section 1115 Demonstration" waiver. The application contains significant proposed changes to the AHCCCS program. The entirety of the waiver proposal can be found at *www.azahcccs.gov*.
- H. The Tuba City Regional Health Care Corporation (TCRHCC) is an accredited health center, providing services in a 6,000 square mile area. It operates under a Title V Compact with the Indian Health Service under the Indian Self-Determination and Education Assistance Act, P.L. 93-638. TCRHCC is located within the Navajo Nation, and serves as a referral center for the western part of the Navajo and Hopi Reservations. Services provided to the community by the hospital include comprehensive inpatient/outpatient emergency services; dental and ophthalmology services; orthopedics; OB/GYN; oral surgery; eye surgery; and urological procedures. See *www.tchealth.org*. TCRHCC has provided comments on Arizona's waiver application submitted September 30, 2015. These comments are attached as Exhibit "A."

NOW, THEREFORE BE IT RESOLVED:

The Navajo Nation supports comments submitted by the Tuba City Regional Health Care Corporation concerning Arizona's proposal for a "New Section 1115 Demonstration Waiver" (submitted by the state on September 30, 2015). Comments of the Tuba City Regional Health Care Corporation, supported by the Navajo Nation, are attached hereto as Exhibit "A."

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Naabik'íyáti' Committee of the 23rd Navajo Nation Council at a duly called meeting in Navajo Nation Council Chambers, Window Rock (Arizona), at which a quorum was present and that the same was passed by a vote of in 17 favor and 0 oppose, this 14^h Day of January, 2016.

A handwritten signature in black ink, appearing to read "LoRenzo Bates", with a stylized flourish at the end.

Honorable LoRenzo Bates, Chairperson
Naabik'íyáti' Committee

Motion: Nelson BeGaye
Second: Leonard Tsosie

NAVAJO NATION

RCS# 229

Naa'bik'iyati Committee

1/14/2016
03:03:09 PM

Amd# to Amd#

Legislation No. 0406-15

PASSED

MOT BeGaye, N
SEC Tsosie

Supporting Comments by the Tuba
City Regional Health Care onAz's
Application for a New Section

Yea : 17

Nay : 0

Not Voting : 7

Yea : 17

Begay, K
Begay, M
Begay, NM
BeGaye, N
Bennett

Chee
Daniels
Filfred
Hale

Perry
Phelps
Slim
Smith

Tso
Tsosie
Witherspoon
Yazzie

Nay : 0

Not Voting : 7

Bates
Brown

Crotty
Damon

Jack
Pete

Shepherd



TUBA CITY REGIONAL HEALTH CARE CORPORATION

167 North Main Street, P.O. Box 600
Tuba City, Arizona 86045-0600
(928) 283.2501

September 25, 2015

AHCCCS

Attn: Office of Intergovernmental Relations
801 E. Jefferson St., MD 4200
Phoenix, AZ 85034



Re: Tuba City Regional Health Care Corporation Comments on AHCCCS Application for a New Section 1115 Waiver Demonstration

The Tuba City Regional Health Care Corporation (TCRHCC) is pleased for the opportunity to comment on AHCCCS' draft application for a new Section 1115 Demonstration Waiver, and appreciates AHCCCS' effort to reach out to consult with Arizona Tribes on the proposed waiver on August 21, 2015. As discussed below, the Tribe is very supportive of AHCCCS' proposal to renew the Uncompensated Care Waiver for Indian Health facilities, but is concerned about several other aspects of the proposed waiver. We believe that many if not all of those concerns could be alleviated through additional consultation. Accordingly, in addition to the comments below, we formally request that the State conduct an additional consultation with TCRHCC on the proposed waiver as soon as is practicable and before AHCCCS submits the waiver proposal to the Center for Medicare and Medicaid Services (CMS).

TRCHCC is a Navajo Nation corporation that operates under a Title V Compact with the Indian Health Service under the Indian Self-Determination and Education Assistance Act, P.L. 93-638. TCRHCC provides services to over 100,000 beneficiaries in a 6,000 square mile area and serves as a referral center for the western part of the Navajo and Hopi Reservations. TCRHCC relies on billing the Arizona Medicaid program for the Medicaid-enrolled individuals it serves to supplement its inadequate IHS funding.

We provide the comments on the following aspects of AHCCCS' proposal: (1) Proposed revisions to the AHCCCS program; (2) the proposed American Indian Medical Home program; and (3) the proposal to renew the Uncompensated Care Waiver for Indian health facilities.

I. Comments on Proposed Revisions to AHCCCS Program

AHCCCS is proposing significant changes to the AHCCCS program in order to implement the requirements of S.B. 1092 and 1475. The proposal would impose copays up to 3% of annual household income, premiums up to 2% of annual household income, impose work requirements, and a five year lifetime limit, among other proposals. It would create AHCCCS CARE accounts that function like Health Savings Accounts, and provides for reductions in payments based on meeting healthy behavior metrics. It would also require mandatory enrollment in AHCCCS.

TCRHCC is concerned that neither the summary of the proposed AHCCCS waiver nor the actual draft waiver state that American Indians and Alaska Natives

(AI/AN) are exempt from mandatory enrollment in AHCCCS in order to access Medicaid benefits, and can continue to receive services through the FFS American Indian Health Program. The only mention of the continued availability of the American Indian Health Program is contained in the summary regarding the American Indian Medical Home. Although we do not believe it is the intent of AHCCCS to make the new AHCCCS CARE plan mandatory for AI/AN, the waiver proposal must be amended before it is submitted in order to make that clear. TCRHCC urges AHCCCS to specifically state in the actual waiver application that it would allow AI/AN to opt-out of participation in the new AHCCCS CARE waiver being proposed.

In addition, the waiver must also be revised so as to ensure that those AI/ANs who elect to participate in the new AHCCCS waiver and the IHS and tribal facilities that bill the new AHCCCS CARE plans may do so in a manner consistent with their rights under the Social Security Act. As you know, AI/AN are exempt from mandatory enrollment in managed care systems, and the new proposed AHCCCS waiver contains a number of provisions that are inconsistent with the rights of AI/AN and tribal health providers. Under the Social Security Act:

- American Indians and Alaska Natives are exempt from premiums and cost-sharing associated with care provided at an I/T/U or through contract health services;¹
- Certain trust related income is exempt from income determinations for purposes of Medicaid eligibility determinations;²
- Certain American Indian and Alaska Native resources are exempt from Medicaid estate recovery;³
- American Indians and Alaska Natives enrolled in managed care can elect to choose their Indian health provider as their primary care provider;⁴ and
- Managed care plans must promptly pay Indian health programs whether they are in-network or not, and Indian health programs have a right to be paid the amount they would be paid under the State plan regardless of what the managed care plan pays for the service.⁵

TCRHCC would like AHCCCS to include the following Special Terms and Conditions as part of its waiver proposal to memorialize these rights. These Special Terms and Conditions have been adopted in other state managed care waivers, and TCRHCC believes they should also be included in AHCCCS' waiver.

Special Terms and Conditions for AI/AN in the AHCCCS Waiver Proposal:

American Indian/Alaska Native Individuals. Individuals identified as American Indian or Alaskan Native (AI/AN) are excluded from this demonstration unless an individual chooses to opt into the demonstration

¹ 42 U.S.C. §§1396o(j) and 1396o-1(b)(3)(A)(vii), as added by Sec. 5006(a) of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) (Feb. 17, 2009).

² 42 U.S.C. §§1396a(ff) and 1397gg(e)(1)(H), as added by Sec. 5006(b) of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) (Feb. 17, 2009).

³ 42 U.S.C. §1396p(b)(3)(B), as added by Sec. 5006(c) of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) (Feb. 17, 2009).

⁴ 42 U.S.C. §1396u-2(h), as added by Sec. 5006(d) of the American Recovery and Reinvestment Act (P.L. 111-5) (Feb. 17, 2009).

⁵ 42 U.S.C. §1396u-2(h), as added by Sec. 5006(d) of the American Recovery and Reinvestment Act (P.L. 111-5) (Feb. 17, 2009).

and access coverage pursuant to all the terms and conditions of this demonstration. Individuals who are AI/AN and who have not opted in to an AHCCCS CARE plan will receive the ABP generally available under the State Plan through the FFS American Indian Health Plan system. An AI/AN individual, whether receiving direct coverage or coverage through an AHCCCS CARE plan will be able to access covered benefits through Indian Health Service (IHS), Tribal or Urban Indian Organization (collectively, I/T/U) facility funded through the IHS. AI/AN individuals who receive services directly by an I/T/U or through referral under Purchased/Referred Care services shall not be imposed any enrollment fee, premium, or similar charge, and no deduction, copayment, cost sharing or similar charges, and payments to an I/T/U or a health care provider through referral under Purchased/Referred care services for services provided to an eligible AI/AN shall not be reduced by the amount of any enrollment fee, premium, or similar charge, and no deduction, copayment, cost sharing or similar charges. Notwithstanding any other provision in this demonstration, to the extent that an AHCCCS CARE plan pays at a rate lower than the rate I/T/Us are entitled to receive under the State Plan, the plan shall provide for payment to the Indian health care provider, whether the provider is a participating or nonparticipating provider with respect to the entity, of the difference between such applicable rate and the amount paid by the managed care entity to the provider for such services. Under Section 206 of the Indian Health Care Improvement Act, (IHCIA), I/T/U facilities are entitled to payment notwithstanding network restrictions.

1. **Notices.** Notices must include information explaining that AI/ANs are excluded from the demonstration unless they opt-in, and that AI/ANs who have not opted in may still receive the ABP available to the new adult group through the American Indian Health Plan FFS system, with access to covered benefits through I/T/U facilities.
2. **No Auto-Assignment for AI/ANs.** Auto-assignment will not apply to AI/ANs unless they have opted in to participate in an AHCCCS CARE Plan, provided that AI/ANs may elect to choose their I/T/U as their primary care provider.

TCRHCC requests consultation on the inclusion of these Special Terms and Conditions and ensuring that the AHCCCS waiver proposal states in writing that it will be optional for AI/AN in Arizona, and contain these provisions to protect AI/AN who elect to participate in the program and the Indian health facilities that serve them.

In addition, TCRHCC also requests consultation on other aspects of the waiver, including the work requirements and lifetime limits. Congress authorized the IHS and tribal health facilities to access Medicaid resources in 1976 in furtherance of the federal trust responsibility and to provide additional federal health care resources to support the systematically underfunded Indian health system. When it did so, it ensured that States would not have to bear any novel costs associated with that new authority by also enacting an amendment to Section 1905(b) of the Social Security Act to ensure a 100 percent Federal Matching Assistance Percentage applied to all services received through an IHS or tribal health facility.

TCRHCC opposes work requirements and lifetime limits to the Medicaid program as it applies to AI/AN in the State, as such conditions are inconsistent with the federal trust responsibility and the intent of Congress in shielding states like Arizona from any costs associated with allowing IHS and tribal health facilities to access the Medicaid program. Lifetime limits and work requirements are inconsistent with Congressional purpose in making Medicaid a resource intended to improve health care delivery through the Indian health system, and TCRHCC opposes such requirements as applied to the Indian health system.

TCRHCC recognizes that AHCCCS undoubtedly intends to submit its waiver proposal to CMS as soon as possible, and as a result requests consultation on these issues, either in person or telephonically, as soon as practicable.

II. Comments on the American Indian Medical Home

TCRHCC was somewhat surprised to see the State's American Indian Medical Home proposal included in this waiver, as it had not heard about it for some time. As a general matter, TCRHCC strongly supports the proposal, as it will provide TCRHCC with the resources and tools it needs to better manage care for individuals in the American Indian Health Program. However, TCRHCC has questions regarding the formula used to set the rate of payment, and questions about payments to non-Indian health providers for care coordination staffed by employees of TCRHCC. Accordingly, we request consultation on this proposal as well.

TCRHCC is a leader in care management for the beneficiaries it serves, and has already met or will meet most of the Medical Home criteria set out in the waiver proposal. Meeting these criteria is very costly for TCRHCC, however, as it does not receive any additional funds to do so. TCRHCC therefore strongly supports the proposal to provide a PMPM rate for I/T/Us that meet the Medical Home criteria, as well as a PMPM reimbursement for diabetes education.

In addition, TCRHCC urges AHCCCS to make the following clarifications to its mandatory criteria. The criteria should reflect that behavioral health is often offered by referral outside the "Medical Home," and referrals should qualify as meeting the criteria for behavioral health. In addition, the reporting required should not be tied to RPMS, the technology used by the IHS. TCRHCC, like many other tribes that have compacted IHS services, have adopted more modern reporting programs, and the criteria should be flexible enough to allow reporting using those systems. Finally, the enhanced access to care metric should be implemented in a manner that allows I/T/Us to gradually meet that goal. Most I/T/Us do not, for example, allow open scheduling, as doing so is too costly, and because it can result in inefficiencies due to missed appointments. Care must be taken that this metric is not implemented in a manner that prevents I/T/Us from participating in the program.

TCRHCC would like to consult with AHCCCS on the formula used to set the PMPM rates proposed in the waiver. It is difficult for TCRHCC to comment on the appropriateness of the rate itself without a better understanding of how it was generated, and how it might change.

TCRHCC also has concerns with regard to non-I/T/Us also qualifying for reimbursement under this program. Currently, TCRHCC empanels its own employees whose salaries it pays with non-I/T/U health facilities to coordinate and manage care.

TCRHCC believes it should receive an additional PMPM reimbursement for the provision of such services at non-I/T/U facilities, as TCRHCC is the entity doing the care coordination and management, not the non-I/T/U facility. To the extent that a non-I/T/U does care coordination for AI/AN on its own, TCRHCC believes they should meet the same metrics as the I/T/Us. In practice, such care coordination may be difficult for non-I/T/U facilities in identifying which patients are AI/AN, and which I/T/U they are empaneled in. In addition, the proposal should also clarify how the non-I/T/Us will communicate care back to the I/T/Us. These questions and concerns would best be addressed through additional consultation with the I/T/Us in the State.

III. Comments on Uncompensated Care Proposal

TCRHCC continues to strongly support the extension of the Uncompensated Care Waiver, and thanks AHCCCS for including it once again in its waiver proposal. The Uncompensated Care Waiver has made a significant difference in TCRHCC's ability to narrow the funding gap between what it receives in appropriations and the needs of the population it serves. TCRHCC strongly supports the extension of the Uncompensated Care Waiver, and stands ready to provide AHCCCS with any information it needs to support the waiver with CMS.

TCRHCC continues to be concerned, however, that the rate of reimbursement made available by the Uncompensated Care Waiver continues to drop. Initially, the Uncompensated Care Waiver was paid on a per encounter basis at the OMB rate. TCRHCC believes this approach most accurately reimburses I/T/Us for the uncompensated care they must provide, not the PMPM rate. TCRHCC encourages AHCCCS to reconsider using an encounter based reimbursement at the OMB rate. To the extent that approach results in administrative burdens to the program, TCRHCC encourages AHCCCS to discuss reimbursement alternatives with CMS, such as withholding some portion of the rate to meet those costs. In the interim, TCRHCC has asked and would like to meet with AHCCCS to discuss the actual formula used to generate the PMPM rate currently being used. TCRHCC is concerned that the formula uses population numbers that are too low, and thus generates a rate that does not accurately reflect the amount of care being provided. Again, TCRHCC believes that CMS would be amenable to discussing changes to the rate or the formula used to generate the rate.

Thank you again for consulting with Tribes on this proposal, and we look forward to discussing it with you further as soon as possible.

Sincerely,



Lynette Bonar, CEO
Tuba City Regional Healthcare Corporation

Cc: Mr. Thomas J. Betlach, Director, AHCCCS
Ms. Bonnie Talatke, Tribal Relations Liaison, AHCCCS
Mr. Elliott Milhollin, Esq.
Mr. Gehl Tucker, Esq.
Honorable Nathaniel Brown, HEHSC Member