HOBBS STRAUS DEAN & WALKER

Medicaid Waivers

National Indian Health Board Annual Consumer Conference

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Administrative Changes to Medicaid

- Price/Verma Letter – March 14, 2017
- Outlines waivers CMS will consider
- Focus on reducing administrative burdens, increasing state flexibility, and transitioning able bodied adults to work and health insurance coverage

"The expansion of Medicaid through the Affordable Care Act (ACA) to non-disabled, working age adults without dependent children was a clear departure from the core, historical mission of the program. Moreover, by providing a much higher federal reimbursement rate for the expansion population, the ACA provided states with an incentive to deprioritize the most vulnerable populations. The enhanced rate also puts upward pressure on both state and federal spending. We are going to work with both expansion and non-expansion states on a solution that best uses taxpayer dollars to serve the truly vulnerable."

- Letter to Nation's Governors from Secretary Price and Administrator Verma, March 14, 2017

Price/Verma Letter

- Streamline State Plan Amendment (SPA) approval process
- “Fast-track” approval of Waiver and demonstration project approvals and amendments
- Incorporate state waiver requests that have already been approved in other states
- Align Medicaid and private insurance policies for non-disabled adults

Price/Verma Letter

- Invites states to consider:
  - Work requirements
  - Premium or contribution requirements
  - Cost-sharing models, including use of HSAs
  - Emergency room co-pays
  - Waivers of presumptive eligibility and retroactive coverage that do not encourage continuous coverage

CRS Report on Judicial Review of Work Requirements

- March 28, 2017 CRS report on whether CMS could legally impose work requirements through a 1115 waiver
- CRS report notes this issue has not been addressed by the courts
- Report indicates that circuit courts have split on whether CMS can approved a waiver that imposes work requirements in connection with the Aid to Families with Dependent Children (AFDC).
- CRS concludes that in order to survive judicial review, an 1115 waiver proposal that imposes work requirements must (1) evaluate whether the waiver will support Medicaid's objectives; and (2) whether the administrative record supports such a determination.
- CRS notes that a simple benefits cut, without more, would likely not sustain judicial review.

State Responses to Price/Verma Letter

- Eligibility limits for able-bodied adults
- Proposals include imposing premiums, co-pays and HSA accounts, work requirements, and time limits
- Goal is to train Medicaid enrollees on how health insurance works and get them off of Medicaid
- Ensure they have “skin in the game”

Wisconsin Waiver Proposal

- Monthly premiums will range from $1 to $10 for persons with income between 20% FPL and 100% FPL.
- Co-pay for emergency room visits of $8 for first visit and $25 for subsequent visits within 12-month period.
- Health risk assessments and healthy behavior incentives will reduce premiums by 50% for engaging in certain behaviors.

Wisconsin Waiver Proposal

- Time Limit/Work Requirements. Time limit of 48 months, after which no eligibility for six months. Engaging in 80 hours of work/training per month exempts month from counting toward 48-month limit.
- Drug screening required and may subsequently require drug testing. Individuals will be referred to substance use disorder (SUD) treatment for testing positive, and failure to participate will result in 6 months of ineligibility.
- No Exemptions for American Indians and Alaska Natives except for premiums and co-pays

Arizona SB 1092

- Requires State to submit waiver by March 30th each year that includes:
- Premiums and copays to discourage emergency room use
- Work requirements for able bodied adults
- Five year lifetime limit on able bodied adults
- HSA-like accounts

MaineCare 1115 Waiver

- Community engagement and work requirements with three month grace period over 36 month period
- Requires working 20 hours/week, participating in Department approved work program 20 hours/week, community service 24 hours/month, job search, student, receiving unemployment benefits or complying with work requirements for SNAP or TANF
- No exemptions for AI/AN

MaineCare 1115 Waiver

- Premiums and cost sharing (except for AI/AN)
- Asset test cap of $5000 instead of MAGI – no exemption for AI/AN
- Elimination of retroactive eligibility
- Elimination of Hospital determination of presumptive eligibility

ARRA Protections

- No premiums, co-payments, deductibles or cost sharing of any kind for services received through IHS, Tribe or PRC. SSA § 1916(j)(1)(A); 42 U.S.C. § 1396o(j)(1)(A).
- Payment to I/T/U cannot be reduced by the absence of copays or premiums from an AI/AN patient. SSA § 1916(j)(1)(B); 42 U.S.C. § 1396o(j)(1)(B).
- Trust land and items of cultural, religious or traditional significance not "resources" for purposes of determining Medicaid eligibility for AI/ANs. SSA 1902(ff)(1)-(4); 42 U.S.C. § 1396a(ff)(1)-(4).
- Certain income and resources exempt from Medicaid estate recovery. SSA § 1917(b)(3)(B); 42 U.S.C. § 1396p(b)(3)(B).

ARRA Managed Care Protections

- If an AI/AN elects to enroll in an MCO, they are allowed to designate an Indian health care provider as their primary care provider if in-network. SSA § 1932(h)(1); 42 U.S.C. § 1396u-2(h)(1).
- An Indian health care provider must be promptly paid at a rate negotiated between the MCO and provider, or at a rate not less than the amount an MCO would pay to a non-Indian health care provider. SSA § 1932(h)(2)(A)-(C); 42 U.S.C. § 1396u-2(h)(2)(A)-(C).
- If the MCO pays the Indian health care provider less than what the Indian health care provider would be paid under the State plan (the encounter rate), then the State must make up the difference in a wraparound payment to the Indian health care provider. SSA § 1932(h)(2)(C)(ii); 42 U.S.C. § 1396u-2(h)(2)(C)(ii).

Strategies for Tribes

- Understand State priorities
  - Increased flexibility
  - Decreased costs
  - Other goals
- Engage with State to Preserve Tribal Rights
  - Preserve tribal statutory rights
  - Preserve exemption from work requirements and free AI/AN access to Medicaid program
  - Work with States to increase 100 Percent FMAP reimbursement
- Request direct consultation with CMS

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