

Centers for Medicare & Medicaid Services

National Indian Health
Board Annual Tribal
Health Conference

September 2018

Updates on Medicaid
Policy and Protections
for Indians under
Medicaid



Topics

- ❖ Medicaid Expansion and Eligibility
- ❖ Indian Trust Income and Resource Exemptions
- ❖ Cost Sharing Protections for Indians
- ❖ Estate Recovery Exemptions for Indians
- ❖ Managed Care Protections for Indian individuals and Indian health care providers
- ❖ 1115 Demonstrations and Transparency Requirements
- ❖ Tribal Consultation
- ❖ Tribe/State Negotiation of 1115 Demonstrations
- ❖ Tribal Specific Delivery Systems
- ❖ CHIP reauthorization and national outreach campaign



Medicaid and the Children's Health Insurance Program (CHIP)

- Medicaid and Children's Health Insurance Program (CHIP) is a State/Federal program that provides coverage for low-income populations.
- States Determine:
 - Who is covered.
 - How providers are paid.
 - What services are covered.
 - Option to propose waivers of certain Medicaid regulations to test and implement innovative approaches (such as 1115 demonstrations), or to waive certain rules on delivery of care, such as home and community based services or managed care.
- CMS Provides:
 - Oversight of Program.
 - Technical Assistance.
 - Approval of demonstration and waiver proposals.
 - Federal Matching Funds.



Medicaid Benefits and Eligibility

- Medicaid and CHIP is a comprehensive programs that covers doctor visits, hospital care, mental health services, prescriptions, prenatal care for women, children's health care needs, and other optional services.
- To be eligible for Medicaid, individuals must be a U.S. citizen or a qualified non-citizen and meet certain income guidelines.
- Medicaid covers the following groups:
 - Children;
 - Pregnant Women;
 - Families;
 - Individuals with Disabilities;
 - Elderly needing long term support services
 - Childless Adults ages 19-64 (Medicaid expansion)



Medicaid and Income Rules

- The Affordable Care Act established a streamlined application process and a new methodology, Modified Adjusted Gross Income (MAGI) for determining eligibility for pregnant women, children and families in Medicaid, CHIP and for premium tax credits in the Health Insurance Marketplace.
- For the aged, disabled and blind groups, States follow traditional (SSI-related) Medicaid eligibility rules.
- Because Medicaid and CHIP enrollees have limited ability to pay out-of-pocket costs due to their modest incomes, federal rules prohibit states from charging premiums in Medicaid for beneficiaries with income less than 150% FPL, prohibit or limit cost sharing for some populations and services, and limit total out-of-pocket costs to no more than 5% of family income.



IHS/Tribal facilities and Medicaid

- In 1976, Congress authorized IHS/Tribal hospitals and clinics to receive reimbursement for services provided to Medicare and Medicaid patients.
- The authority to bill Medicare and Medicaid is unique to any other federal health program (i.e. VA and DOD do not have this authority).
- IHS publishes its reimbursement rates in the Federal Register on an annual basis, often called the OMB rates.
- In addition to Medicaid and Medicare, ITUs also bill the Children's Health Insurance Program (CHIP) and private insurance, including those purchased on the Health Insurance Marketplace.
- CMS reimburses States 100% for services provided to AI/ANs in IHS and Tribally operated facilities, this is commonly referred to as the 100% Federal Medical Assistance Percentage (FMAP).



ARRA Indian Trust Income Exemptions

In 2009, Congress enacted Section 5006 of the American Recovery and Reinvestment Act that provided protection for Indians under Medicaid, including exempted certain Indian income from Medicaid eligibility determinations:

- Distributions from trust/reservation property
- Income from property and rights related to hunting, fishing and natural resources
- Income from the sale and use of cultural property or subsistence property
- Student financial assistance provided by BIA or a Tribe
- Income that falls within the IRS “General Welfare” Doctrine
- Individual Indian Money (IIM) accounts
 - Restricted and unrestricted
- Monies paid out from exempt resources
- Distributions from Alaska Native Claims Settlement Act (ANCSA) Corporations and Settlement Trusts
- Any other income that is non-taxable according to federal law or IRS guidance



ARRA Indian Resource Exemptions

- Property located on a reservation or within the most recent boundaries of a reservation
- Real property and improvements
 - Ownership interest in
 - Rents
 - Leases
 - Royalties
 - Usage rights
 - For use of
 - Natural resources
 - Fish/shellfish
 - Harvesting animals
 - Harvesting plants or timber



ARRA Resource/Income Exemptions (cont.)

- Also excluded are items with religious, spiritual, traditional or cultural significance or used to support subsistence or a traditional lifestyle according to tribal law or custom
- Monies received for usage or ownership rights for excluded resources are
 - **Not** counted as income in the month of receipt
 - May be countable as a resource the first of the following month



ARRA Medicaid Cost Sharing Exemptions

- AI/ANs who are eligible for or have utilized services from an Indian health care provider (IHCP) or through purchased referred care (PRC) are exempt from premiums and enrollment fees for Medicaid.
- AI/ANs who have ever utilized an IHCP or received a referral under the PRC Program are exempt from copayments, deductibles and coinsurance.
- AI/AN children are exempt from all cost sharing in CHIP.



ARRA Estate Recovery Protections

- Properties exempt from Medicaid estate recovery action:
 - Property located on a reservation or within the most recent boundaries of a reservation including:
 - Real property and improvements
 - Ownership interest in:
 - Rents
 - Leases
 - Royalties
 - Usage rights
 - For use of:
 - Natural resources
 - Fish/shellfish
 - Harvesting animals
 - Harvesting plants or timber



ARRA Estate Recovery Protections (cont.)

- Items with religious, spiritual, traditional or cultural significance or used to support subsistence or a traditional lifestyle according to tribal law or custom.
- Ownership interests left as a remainder in an estate in rents, leases, royalties, or usage rights in listed properties, as long as they can be clearly identified as such.

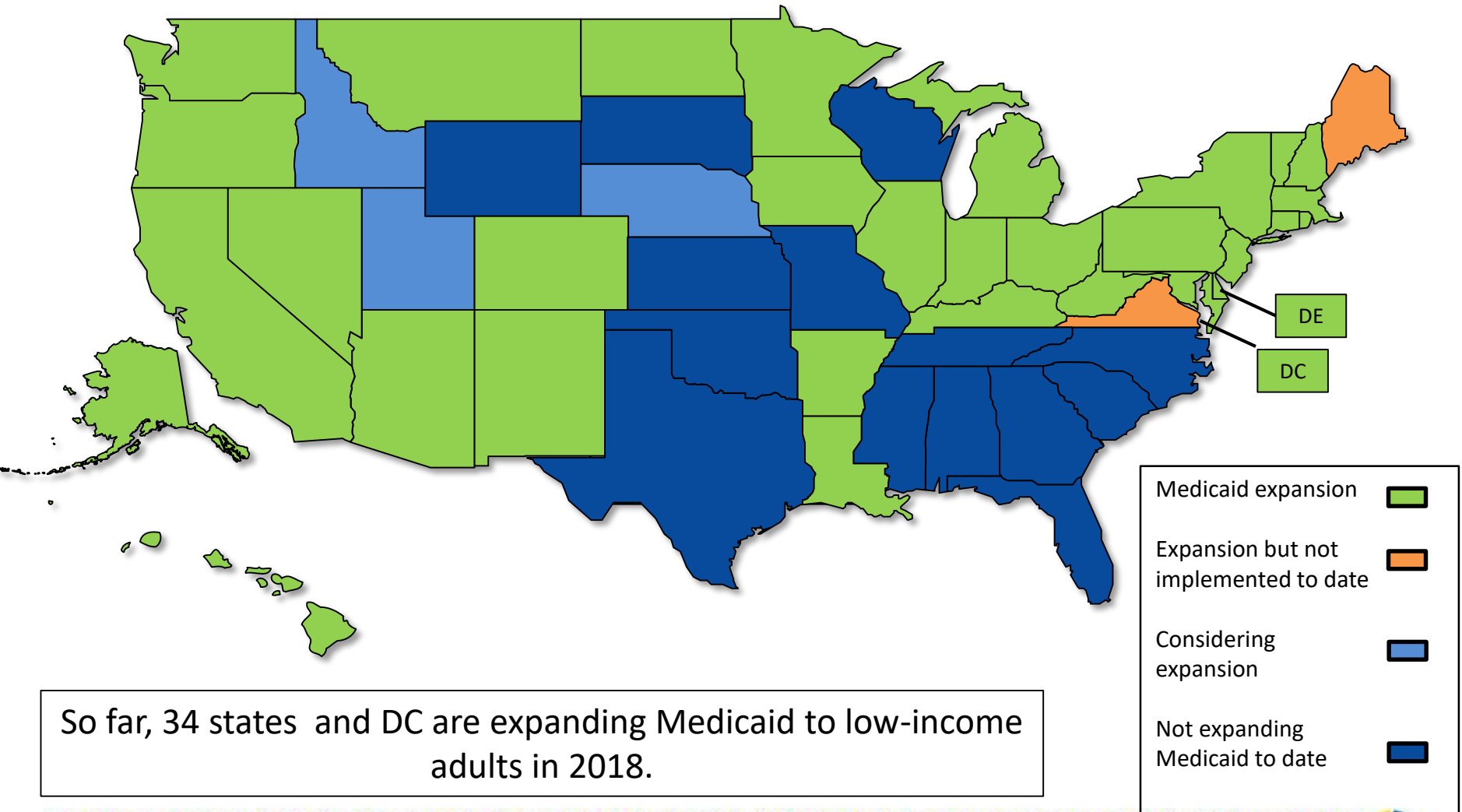


ACA Medicaid Expansion

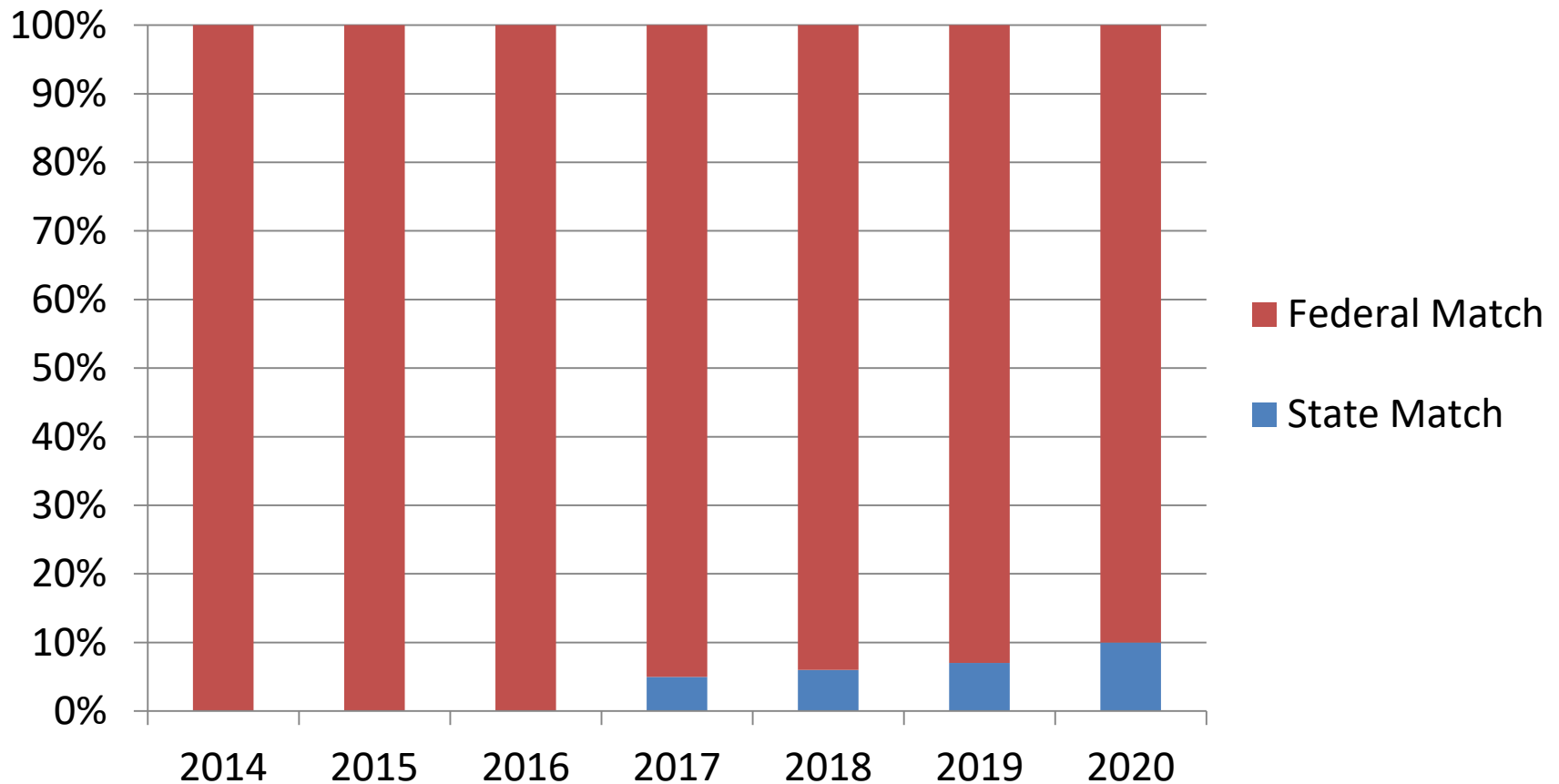
- States have the option to extend Medicaid coverage to low-income adults (age 19 to 64) with incomes up to 138% of the FPL
 - 100% federal funding for 3 years; gradually leveling out at 90% in 2020
- States decide when to expand and there is no deadline for state decision
- As of June 2018, 34 states and DC have expanded Medicaid.
- Two other states, Maine and Virginia, are expected to expand in 2019.



Medicaid Expansion



Unprecedented Federal Support

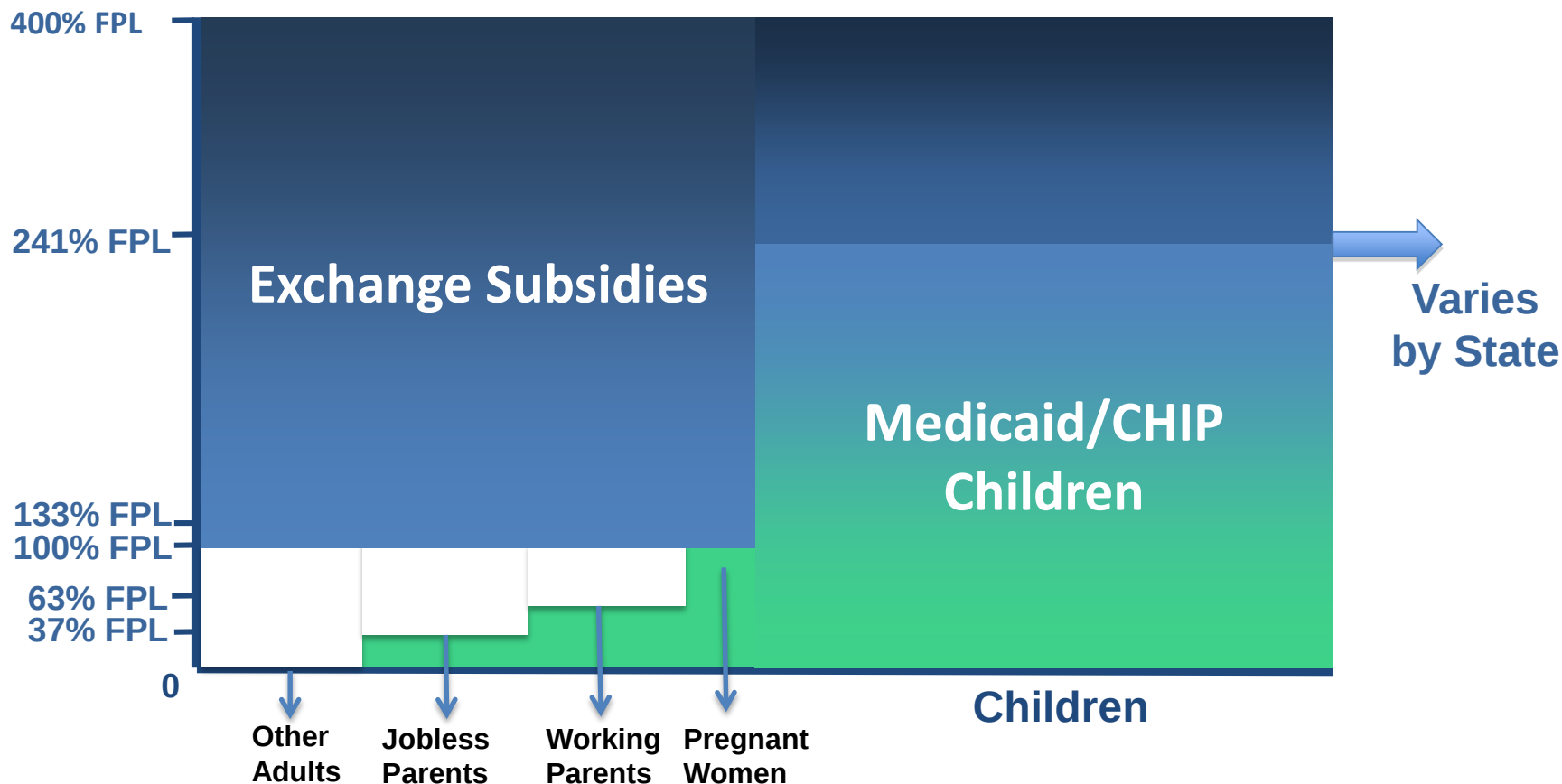


The 100 percent federal funding phases down to 90 percent by 2020, and stays at 90 percent onward.



Gaps in Coverage in States that Do Not Expand Medicaid

Affordable Insurance Coverage without Expansion
(For non-elderly, non-disabled individuals, based on current median state eligibility)



*100% FPL is \$11,770 for an individual and \$20,090 for a family of 3

Managed Care Protections for AI/ANs

An AI/AN enrolled in managed care can:

- Choose to get care from an IHCP, even if the IHCP is not in the managed care network;
- Choose an IHCP as their primary care provider, if the IHCP is in the managed care network;
- If insufficient IHCPs in network, the AI/AN enrollee may access out-of-state IHCPs; and
- Receive a referral from an IHCP to a network provider without a duplicative visit to a network provider.



Managed Care Protections for IHCPs

Payment:

- When the amount an IHCP receives from a Managed Care Entity (MCE) is less than the applicable encounter or fee-for-service rate, the state must make a supplemental payment to the IHCP to make up the difference between the amount the MCE pays and the amount the IHCP would have received under FFS or the applicable encounter rate.
- States may allow the MCE to pay the FFS or applicable encounter rate directly to the IHCP.



Indian Managed Care Contract Addendum

The ***“ITU Addendum”*** outlines all the federal laws, regulations, and protections that are binding on managed care entities and identifies several specific provisions that have been established in federal law that apply when contracting with IHCP.

- The use of this Addendum benefits both managed care entities and IHCPs by lowering the perceived barriers to contracting with IHCPs, and minimizing potential disputes.
- The Addendum helps to integrate IHCPs into managed care networks and ensures that Indian beneficiaries have access to a comprehensive and integrated benefits package and ensure that Indian can continue to be served by their IHCP of choice.



Indian Managed Care Entity (IMCE)

- The ARRA protections established authority for a Tribe or Tribal organization to establish an Indian Managed Care Entity (IMCE).
- An IMCE can restrict its enrollment to Indians in the same manner as IHCPs may restrict the delivery of services to Indians.
- Currently, there are no IMCEs



Medicaid SHO letter: 100 Percent FMAP Policy

- On February 26, 2016, CMS issued a State Health Official (SHO) letter.
- Federal Medicaid statute provides for 100% federal match (FMAP) for services “received through” IHS/Tribal facilities
- Previous interpretation did not generally extend 100% FMAP to services provided outside of IHS/Tribal facilities



Medicaid SHO letter : 100 Percent FMAP Policy

- Permits a wider scope of services
- Request for services must be in accordance with a written care coordination agreement
- Medicaid billing and payments to non-IHS/Tribal providers
- Medicaid beneficiary and IHS/Tribal Facility participation is voluntary



Medicaid SHO letter : 100 Percent FMAP Policy

Permitting a Wider Scope of Services:

- Scope of services now includes:
 - All services the IHS/Tribal facility is authorized to provide according to IHS rules, and
 - Services covered under the approved Medicaid State Plan
- Service highlights:
 - Long-term services and supports
 - Transportation
 - Including non-emergency medical transportation (NEMT)



Medicaid SHO letter : 100 Percent FMAP Policy

Request for Services Under a Written Care Coordination Agreement:

- There must be an established relationship between the AI/AN Medicaid beneficiary and the IHS/Tribal facility practitioner
- Both the IHS/Tribal facility and non-IHS/Tribal provider must be enrolled in the state's Medicaid program as rendering providers
- There must be a written care coordination agreement between the IHS/Tribal facility and the non-IHS/Tribal provider



Medicaid SHO letter: 100 Percent FMAP Policy

Written Care Coordination Agreements:

- Minimum requirements:
 - The IHS/Tribal facility practitioner provides the request for specific services and relevant information about the patient to the non-IHS/Tribal provider;
 - The non-IHS/Tribal provider sends information about the care provided to the patient to the IHS/Tribal facility practitioner;
 - The IHS/Tribal facility practitioner continue to assume responsibility for the patient's care by assessing the information and taking appropriate action; and
 - The IHS/Tribal facility incorporates the patient's information in his/her medical record.



Medicaid SHO letter : 100 Percent FMAP Policy

Medicaid Billing and Payment:

- Medicaid rates paid to IHS/Tribal facilities for services must be the same for services provided to AI/ANs and non-AI/ANs.
- Medicaid rates for services furnished by non IHS/Tribal providers must be the same for all beneficiaries served.
- A non-IHS/Tribal provider bills directly at the State plan rate applicable to the service provided (e.g., physician consultation)



Medicaid SHO letter: 100 Percent FMAP Policy

State Plan Requirements:

- Payment methodologies for all services provided by IHS/Tribal facilities and non-IHS/Tribal providers must be set forth in an approved Medicaid state plan
- Payment rates cannot vary based on the applicable FMAP
- However, states can set rates that address unique needs in particular geographic areas or encourage provider participation in underserved areas
- States should review existing state plans to ensure compliance



Medicaid SHO letter: 100 Percent FMAP Policy

Compliance and Documentation:

In states where IHS/Tribal facilities implement the policy described in the SHO, the Medicaid agency must establish a process for documenting claims for expenditures for items or services “received through” an IHS or Tribal facility.

The documentation must be sufficient to establish that:

- The service was furnished to an IHS/Tribal facility patient pursuant to a request for services from the IHS/Tribal practitioner;
- The requested service was within the scope of a written care coordination agreement;
- The rate of payment is authorized under the state plan; and
- No duplicate billing for the same service and beneficiary by both the facility and the provider



Medicaid 4 Walls limitation: 100 Percent FMAP Policy

Four Walls Limitation and FAQs:

- On January 18, 2017, CMCS issued Frequently Asked Questions (FAQs) to address common questions related to provisions of the Tribal SHO letter relating to Medicaid billing and payments to non-IHS providers.
- The FAQs provided an explanation of the “four walls” limitation. Under CMS’ interpretation of its regulations at 42 CFR 440.90 and the underlying statute, “clinic services” must be provided at the clinic – i.e., within the “four walls” of the facility – unless the beneficiary is homeless.
- Under this interpretation, services furnished outside of the “four walls,” even services furnished by an off-site practitioner under a care coordination agreement consistent with the Tribal SHO, may not be billed at the outpatient facility all inclusive rate.
- Services provided outside of the “four walls” of a clinic, by either Tribal employees or non-Tribal providers, would have to be billed at the Medicaid practitioner fee for service rate.



Medicaid 4 Walls limitation: 100 Percent FMAP Policy

Four Walls Limitation and FAQs:

- The FAQs offered a solution to minimize the impact on Tribal clinics by explaining that Tribal programs would have the option to enroll as a Medicaid FQHC and could be paid at an Alternate Payment Methodology (APM) rate, such as the IHS All Inclusive Rate (AIR) Medicaid outpatient rate, for services provided by Tribal employees or non-Tribal providers outside of the “four walls.”
- CMS held an All Tribes’ Call on August 9, 2017 to provide Technical Assistance on this policy
- A copy of the FAQs can be found at:
<https://www.medicaid.gov/federal-policy-guidance/downloads/faq11817.pdf>



Medicaid 1115 Demonstrations

Section 1115 of the Social Security Act gives the Secretary of Health and Human Services authority to approve experimental, pilot, or demonstration projects that promote the objectives of the Medicaid and CHIP programs. These demonstrations give states flexibility to design and improve their programs, is to demonstrate and evaluate policy approaches such as:

- Expanding eligibility to individuals or imposing eligibility requirements not otherwise authorized under Medicaid;
- Providing services not typically covered by Medicaid; or
- Using innovative service delivery systems that improve care, increase efficiency, and reduce costs.



1115 Demonstration Transparency Review Process

- Section 1115 Demonstrations can have a significant impact on beneficiaries, providers, States, Tribes.
- The Affordable Care Act (ACA) made changes to the process by which States apply for Demonstrations, and the Federal government reviews such applications, to ensure public input.
- Transparency requirements apply to initial applications and extensions and not to demonstration amendments.
- The transparency regulations are at 42 C.F.R. section 431.400 - .428.



1115 Demonstration Transparency Requirements

- There is a state public notice period and a federal public notice period.
- The regulations include tribal consultation requirements that are ***separate*** from the public notice requirements.
- As part of the state's application, the state must submit to CMS public comments it received and how the state responded to those comments, including comments provided through tribal consultation.



1115 Demonstration Transparency Public Input Opportunities

- It is very important to submit comments to the state during the public notice and tribal consultation periods.
- It is equally important to submit comments to CMS during the federal comment period.
- CMS posts the comments it receives to its website and considers them when evaluating a demonstration application.



General Overview of State/Tribal Consultation Requirements

Three Distinct Authorities Requiring Tribal Consultation

ARRA Section 5006	Transparency Regulation	State Medicaid Director Letter (July 17, 2001 (SMDL #01-024)
The ARRA section 5006 process at codified at 1902 (a)(73) is applicable to Medicaid and CHIP SPAs, new, extension and amendment 1115 Medicaid demonstration applications, and 1915(b) and 1915(c) waiver applications, extensions and amendments.	The transparency regulation at 42 C.F.R. section 431.400 through .428 is applicable to new Medicaid 1115 applications and Medicaid 1115 extension applications.	Applicable to (new applications or extension applications) for 1115 demonstrations, 1915 (b) and 1915(c) waivers when (1) the state has an ARRA consultation SPA that includes Federally recognized tribes; or (2) does not have an ARRA SPA (no Indian health program) but has a Federally recognized tribe.



Tribe/State Negotiations on 1115 Demonstrations

- By participating in the public/tribal comment process, tribes can provide valuable input into the design and operation of a particular demonstration program.
- Tribes in many states have successfully negotiated “Special Terms and Conditions” (STCs) which govern all aspects of the program *and* tribal specific programs.



Tribal Specific Delivery Systems

- Arizona has several Medicaid tribal specific delivery systems including the “American Indian Health Program” (FFS Medicaid); The “American Indian Medical Home (PMPM payment for certain services);” and a tribal specific behavioral health system.
- Montana has a contract with the state that provides a PMPM payment for certain services for chronically ill patients.
- Washington has a dedicated tribal Delivery System Incentive Program that allows tribes to submit projects to the state and be paid for progress made on those projects.



CHIP Reauthorization

GET IN THE GAME

**"We do not inherit the Earth
from our Ancestors; we borrow
it from our Children"**
- Native American Proverb



**Enroll your child in the Children's
Health Insurance Program (CHIP/Medicaid)
and help them stay strong and healthy.
Call **1-877-KIDS-NOW** or visit our
website to learn more.**

Go to InsureKidsNow.gov
or call 1-877-KIDS-NOW to learn more.

For more information about health insurance for the
whole family, visit HealthCare.gov/tribal



ICN 90896 B

CMS Product No. 11711-N



Connecting Kids to Coverage Campaign

- CHIP extension legislation provided:
 - \$120 million through FFY 2023 (HEALTHY KIDS Act)
 - \$96 million for outreach and enrollment grants targeting eligible uninsured children
 - \$12 million for grants targeting eligible American Indian/Alaska Native children
 - \$12 million for the National Campaign
 - \$48 million for FFYs 2024-2027 (ACCESS Act)
 - \$33.6 million for outreach and enrollment grants targeting eligible uninsured children
 - \$4.8 million for grants targeting eligible American Indian/Alaska Native children
 - \$4.8 million for the National Campaign
 - \$4.8 million for technical assistance
- Stay tuned for Notice of Funding Opportunity announcements in the coming months



Questions?

For more information on CMS Tribal Affairs visit
go.cms.gov/AIAN

Or send us questions at our Tribal Affairs
mailbox:

tribalaffairs@cms.hhs.gov

