

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-25-26
Baltimore, Maryland 21244-1850



State Demonstrations Group

Jim Jones
Medicaid Director
Division of Medicaid Services Department of Health Services
1 West Wilson Street, Room 350
Madison, WI 53702

Dear Mr. Jones:

The state of Wisconsin submitted the final draft of its post approval Tribal Consultation Plan on November 12, 2020, as required by special term and condition (STC) #45 for its “BadgerCare Reform” section 1115 demonstration (Project No. 11-W-00293/5). The Centers for Medicare & Medicaid Services (CMS) appreciates the cooperation and collaboration your staff provided during our review of your plan.

At this time, we have no further questions about this plan. With this letter, CMS approves the state to move forward with implementation of the final version of the Tribal Consultation Plan. As required by the BadgerCare Reform STCs, the Tribal Consultation Plan, which is enclosed with this letter, has been added as Attachment I of the STCs.

We look forward to continuing to work with you and your staff on the BadgerCare Reform demonstration. If you have any questions, please contact your project officer, Ms. April Wiley, at april.wiley@cms.hhs.gov. We appreciate your cooperation throughout the review process.

Sincerely,

11/25/2020

X Andrea J. Casart

Signed by: Andrea J. Casart -A

Andrea J. Casart
Director
Division of Eligibility and Coverage Demonstrations

Enclosure

cc: Mai Le-Yuen, State Monitoring Lead, Medicaid and CHIP Operations Group

BadgerCare 1115 Tribal Consultation Plan (Updated 2019)

This document comprises of the 1115 BadgerCare Reform Demonstration Project Tribal Consultation Plan regarding the American Indian (AI) and Alaskan Native (AN) population residing in Wisconsin.¹ Please note: this document is separate from the Wisconsin Department of Health Service's tribal consultation plan.²

1. Overview of the BadgerCare Reform Demonstration Project

On October 31, 2018 the Centers for Medicare and Medicaid Services (CMS) approved the Wisconsin 1115 BadgerCare Reform Demonstration Waiver for Childless Adults. The waiver primarily provides authority for the state to provide a robust benefit package to non-pregnant, non-disabled, non-elderly childless adults with incomes up to and including 100 percent of federal poverty level (FPL).

The following are the key components of the BadgerCare Reform 1115 Demonstration Project as outlined in the Special Terms and Conditions (STC) of the approved waiver amendment:

- Monthly premiums, modifiable based on household income and healthy behavior incentives, and for which non-payment may result in a period of ineligibility.
- An \$8 copayment for non-emergent use of an emergency department (ED).
- Healthy behavior incentives, determined through the Health Risk Assessment (HRA), applied as a reduction in the monthly premium amount.
- Community engagement requirements, including limiting benefit eligibility to 48 months for non-compliance.
- Full coverage of residential substance use disorder (SUD) treatment for all BadgerCare Plus and Medicaid members.

2. Tribal Consultation

Under Special Terms and Conditions 45 of BadgerCare Reform Demonstration Project waiver, the state of Wisconsin must consult with federally recognized tribal governments and with Indian health care providers, and through consultation, identify any tribal concerns. Moreover, the STCs directs the state to deliver to CMS a plan and timeline for addressing any tribal concerns related to the impact of the community engagement requirements and/or any issues identified as part of the review. The updated 1115 Tribal Consultation Plan will be incorporated into the STCs, as Attachment I.

¹ An individual, defined at title 25 of the U.S.C. sections 1604(c), 1604(f), 1679(b) or who has been determined eligible, as an Indian, pursuant to 42 C.F.R 136.12 or Title V of the Indian health care providers (IHS, an Indian Tribe, Tribal Organization, or Urban Indian Organization-I/T/U) or through referral under Contract Health Services, now referenced as Purchased/Referred Care (PRC).

² Section 1.4 of the Wisconsin Medicaid State Plan

On April 9, 2019, Governor Evers issued Executive Order #18 relating to an affirmation of the intergovernmental relationships among the State of Wisconsin and the Tribal Nations located within the state. The following are important components of the executive order³:

- Recognize the State of Wisconsin's unique legal relationship with Tribal Nations and engage them with the respect accorded to other governments.
- Engage Tribal Governments, on a government-to-government basis, in developing policies or programs that directly impact Tribal Nations or their members, and appropriately consult Tribal Governments on matters that may indirectly impact the Tribal Nations or their members.

In the spirit of Governor Evers' Executive Order, the Wisconsin Department of Health Services (DHS) is committed to listening and addressing tribal concerns related to the impact of the BadgerCare Reform Project amendment. Since submitting the 1115 Tribal Consultation Plan in December 2018, DHS has continued conversations with CMS with respect to the waiver impact on tribes. Specifically, DHS reached out to CMS regarding Lac du Flambeau's letter sent to the department asserting that inadequate consultation occurred for the BadgerCare Reform Demonstration Project waiver amendment. CMS advised DHS to utilize the 1115 Tribal Consultation Plan update as the avenue to address the concerns raised by tribal nations.

As part of updating the Tribal Consultation Plan, DHS continues to follow the Wisconsin tribal consultation policies and procedures.⁴ Moreover, DHS is committed to consult with the 11 federally recognized tribes and urban Indian health center located in Wisconsin as required by CMS.⁵ The Wisconsin Department of Health Services has taken the following actions since submitting the first 1115 Tribal Consultation Plan:

- Wisconsin Tribal Health Directors Association Meeting—a bi-monthly meeting of the Tribal Health Directors with DHS:
 - January 9, 2019
 - March 13, 2019
 - May 8, 2019
 - July 10, 2019
 - September 11, 2019
- Wisconsin DHS Tribal Consultation Meetings: a bi-annual meeting between DHS and all Wisconsin tribes covering a variety of subject areas. Tribal Chairpersons, Tribal Leads, DHS Secretary and Administrators are in attendance
 - May 7, 2019
 - October 29, 2019

³ https://docs.legis.wisconsin.gov/code/executive_orders/2019_tony_evers/2019-18.pdf

⁴ *State of Wisconsin Department of Health Services Policy Regarding Consultation with Wisconsin Indian Tribes.* <https://www.dhs.wisconsin.gov/publications/p0/p00864-consult-policy.pdf>

⁵ *Section 1.4 of the Wisconsin Medicaid State Plan*

- Reached out to CMS-Tribal Affairs leadership to seek guidance on addressing concerns raised through the 1115 BadgerCare Demonstration Waiver public comment period and during tribal consultation meetings in 2018 and 2019.
- Division of Medicaid Services notification letter to tribal leadership announcing where and when DMS staff were to present 1115 updates and seek tribal feedback on perceived impact of implementation.

In August of 2019, Jim Jones, DHS Medicaid Administrator, sent a notice letter to tribal leadership that the Division of Medicaid Services staff would attend the September 11, 2019 Wisconsin Tribal Health Director's Association meeting and the Department of Health Services Year-End Tribal Consultation meeting on October 29, 2019 to discuss the work necessary to exempt tribal members from the community engagement requirement and to discuss a strategy for use of the Health Risk Assessment that is beneficial to the tribe and tribal health systems.

At the September 11, 2019 Tribal Health Directors meeting, DMS presented and asked for feedback regarding the 1115 Tribal Consultation Plan update. The Health Directors unanimously voted to move forward with DHS updating the 1115 Tribal Consultation Plan to address the ongoing feedback tribes have provided on the impact of the BadgerCare Reform amendment. The Health Directors expressed positive feedback on DHS' commitment to our government-to-government relationship.

Thirty days prior to the October 29, 2019 Department of Health Services Year-End Tribal Consultation, DMS submitted the tribal consultation plan to Tribal Leadership for their review. At the October 29, 2019 meeting, DMS requested feedback from tribal leadership and received positive feedback regarding the plan. Furthermore, tribal leadership raised no objections to submitted the proposed plan to CMS.

3. Joint Tribe and State Decisions Regarding BadgerCare Policy Components

Premiums and Emergency Department Copayments

- American Indians and Alaskan Natives who are eligible to receive or who have received an item or services furnished by an Indian health care provider or through referral under contract health services are exempt from the monthly premiums, consistent with section 1916(j) of the Social Security Act.
- American Indians and Alaskan Natives who are currently receiving or who have ever received an item or services furnished by an Indian health care provider or through referral under purchase/preferred care are exempt from the emergency department copayment requirements, consistent with section 1916(j) of the Social Security Act and 42 CFR 447.56.

Health Risk Assessment (HRA)

- As noted above, American Indians and Alaskan Natives are not subject to premiums and emergency department copays. Given that the HRA is, within BadgerCare 1115, utilized

for the purpose of determining premium amounts, American Indians and Alaskan Natives will not be required to complete the HRA.

- Consultation has underscored that Medicaid provisions are based in federal obligations to tribal governments. Therefore, our consultation with tribes has focused on ensuring that additional barriers to Medicaid access are not placed upon tribes. Given that the HRA is not needed for premium calculations in the case of AI / AN, the state has aligned with tribes to forgo mandating the HRA for these populations.

Community Engagement

- Through consultation with tribes, and through review of precedent set by Arizona and Utah in providing exemptions to AI / AN populations for community engagement, Wisconsin has decided to follow suit. Wisconsin will exempt all American Indians and Alaskan Natives residing in the state from the community engagement requirement as outlined in the BadgerCare Reform Demonstration Project.

SUD Residential Treatment

- AI / AN individuals will be able to access SUD Residential Treatment through BadgerCare.
- AI / AN individuals will be able to access this benefit through the same pathways as other BadgerCare members. For example, while not a comprehensive list of referral routes, members will be able to access SUD Residential Treatment via: primary care referral, self-referral. The state will ensure that adequate communication is provided to ensure that individuals are aware of how to receive referrals to utilize this benefit.

The department remains committed to working with Wisconsin tribes on concerns about the implementation process of the 1115 BadgerCare Reform Demonstration Project waiver. Please incorporate this document into the Special Terms and Conditions, as Attachment I.