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

CMS
CENTERS FOR MEDICARE & MEDICAID SERVICES
CENTER FOR MEDICAID & CHIP SERVICES

State Demonstrations Group

AUG 15 2018

Donna Frescatore
Director
Office of Health Insurance Programs
New York State Department of Health
Empire State Plaza
Corning Tower (OCP – 1211)
Albany, NY 12237

Dear Ms. Frescatore:

This letter is intended to formalize discussions between New York's Office of Health Insurance Programs (OHIP) and Centers for Medicare & Medicaid Services (CMS) staff on July 9, 2018 to bring resolution to a few outstanding Medicaid Redesign Team (MRT) section 1115(a) demonstration program items as outlined below.

The state has two amendments to the MRT demonstration that have been in a "pending" status on Medicaid.gov since 2015. The first amendment request is the "Vital Access Provider (VAP) Exception Request." As we discussed, CMS determined, in agreement with the state, that we already approved the state's VAP exception request as part of the December 10, 2015 approval granting North County Initiative, LLC and Leatherstocking Collaborative Health Partners (Bassett) VAP exceptions (see attached). Accordingly, CMS will move this request from the Pending Application section to the Administrative Record section on the Medicaid.gov MRT demonstration webpage.

The second amendment request is the "Uncompensated Care Amendment" and, as we discussed, in accordance with 2016 discussions between CMS and OHIP leadership, this amendment cannot be approved as proposed by the state because it does not align with CMS policy for the structure and funding of uncompensated care pools. CMS will similarly move this request from the Pending Application section to the Administrative Record section on the Medicaid.gov MRT demonstration webpage.

Finally, the state asked CMS to provide clarification on federal transparency requirements at 42 CFR §431.408 for tribal consultation on state proposed section 1115(a) applications. Federal requirements outline that states shall have a process to consult with Federally-recognized Indian tribes, Indian health programs, and/or urban Indian health organizations on section 1115 applications prior to submission of such application to CMS. Since New York's current Medicaid State Plan for tribal consultation does not address a process for section 1115(a) applications nor includes Federally-recognized tribes, the state must conduct consultation in

accordance with the process outlined in CMS' July 17, 2001 letter to State Medicaid Directors (SMDL #01– 024) that provided direction to states on tribal participation in the planning and development of Medicaid and CHIP demonstration applications (see attached). We are available to work with the state on amending its Medicaid State Plan to align its tribal consultation process with federal transparency requirements for section 1115 applications.

Your CMS project officer, Adam Goldman, is available to address any questions you may have related to this correspondence. He can be reached at (410) 786-2242 or Adam.Goldman@cms.hhs.gov.

We look forward to continuing to partner with you and your staff on the New York MRT section 1115(a) demonstration.

Sincerely,

[redacted]

Angela D. Garner
Director
Division of System Reform Demonstrations

cc: Michael Melendez, Associate Regional Administrator, CMS New York Region
Maria Tabakov, State Lead, CMS New York Region

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-01-16
Baltimore, Maryland 21244-1850

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State Demonstrations Group

Jason Helgerson
Director
Office of Health Insurance Programs
New York State Department of Health
Empire State Plaza
Corning Tower (OCP – 1211)
Albany, NY 12237

Dear Mr. Helgerson:

This letter is to inform you that the Centers for Medicare & Medicaid Services (CMS) has made determinations for granting vital access provider (VAP) exceptions under New York's delivery system reform incentive payment (DSRIP) program. CMS is making final safety-net provider determinations for provider systems that have applied for a safety net provider designation after creating not-for-profit new corporations. Accordingly, North Country Initiative, LLC and Leatherstocking Collaborative Health Partners (Bassett) are approved to participate in DSRIP as safety net providers and as lead entities in a performing provider system (PPS).

DSRIP participation as safety net providers for these entities is contingent upon New York's assurance that the entities, by our agreed upon definition, consist of all safety net providers, that non-qualifying providers will not be added to the PPS without applying for another exception, and that non-qualifying providers are eligible to receive DSRIP payments totaling no more than 5 percent of a project's total valuation. New York also assures that none of the above entities will become a source for Inter-Governmental Transfer (IGT) in order to receive funding from the Public Hospital Transformation Fund and will only be awarded with DSRIP project funding from the Safety Net Performance Provider System Transformation Fund.

Your project officer, Deborah Steinbach, can be reached by phone at (410) 786-7404, or by e-mail at Deborah.Steinbach@cms.hhs.gov, should you need to contact her. We look forward to continuing to work with you and your staff on your 1115 demonstration.

Sincerely,

[redacted]

Angela D. Garner
Director, Division of System Reform Demonstrations

Cc: Michael Melendez, Associate Regional Administrator, CMS New York

DEPARTMENT OF HEALTH & HUMAN SERVICES
Health Care Financing Administration

Center for Medicaid and State Operations
7500 Security Boulevard
Baltimore, MD 21244-1850

SMDL #01-024

July 17, 2001

Dear State Medicaid Director:

This is one in a series of letters regarding American Indian and Alaska Native (AI/AN) health policy issues and the Medicaid program and the State Children's Health Insurance Program (SCHIP). This letter addresses the request of Federally recognized Tribes (hereafter known as "Tribes") to more actively participate in the planning and development of Medicaid and SCHIP waiver proposals and waiver renewals.

As set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions, it has long been recognized that the United States has a unique relationship with Tribal Governments. This government-to-government relationship recognizes the right of Tribes to tribal sovereignty, self-government and self-determination. At the same time, because Tribes have a separate governmental structure that exists within State(s) border(s), it is important for States to work as closely as possible with Tribes on issues such as Medicaid and SCHIP to ensure the provision of health care for Medicaid and SCHIP enrolled Tribal members is no less than it would be for non-Tribal members equally enrolled.

The Centers for Medicare and Medicaid Services (CMS) (formerly the Health Care Financing Administration) is committed to ensuring full access to Medicaid and SCHIP for all eligible beneficiaries. Access to the decision-making process regarding the Medicaid and SCHIP programs is especially critical for Tribes for cultural, treaty, and statutory reasons. Participation in the decision-making process can best be achieved through an ongoing and effective consultation process that ensures the inclusion of Federally-recognized Tribal governments while preserving the right of State Medicaid agencies to make appropriate decisions based upon the needs of all Medicaid and SCHIP beneficiaries.

The Federal Government is also committed to an effective Tribal consultation process. Many States have established viable mechanisms to ensure an ongoing consultation process with Tribal governments. State experience has demonstrated that there is no single Tribal consultation process that can or should be imposed upon the States. That experience has demonstrated that State-Tribal consultation protocols can vary within a State depending upon inter-governmental relationships, expertise, and Tribal interest.

Although States may partner with a Tribe on a waiver proposal, because Federal law only allows CMS to consider Medicaid and SCHIP proposals submitted by States, we are encouraging States to be as responsive as possible to the issues and concerns expressed by the Tribes during the consultation process. CMS, during the review of Section 1915 and Section 1115 waivers, will look at the steps each State has taken to consult with Tribes based upon individual State considerations. CMS does not consider that consultation means that any or all Federally-recognized Tribal Government(s) in a particular State must approve the proposed waiver nor does it mean that Tribes must concur with a State's waiver request or waiver renewal.

Therefore, in reviewing all Section 1915 and Section 1115 waiver requests submitted after October 1, 2001 CMS will look to see that

1. All Federally-recognized Tribal Governments maintaining a primary office and/or major population within that State are notified in writing at least 60 days before the anticipated submission date of the State's intent to submit a Medicaid waiver request or waiver renewal to CMS.

2. The notification describes the purpose of the waiver or renewal and the anticipated impact on Tribal members. The description of the impact need not be Tribal specific if the impact is similar on all Tribes.

3. The notification also describes a method for appropriate Tribal representatives to provide official written comments and questions within a time frame that allows adequate time for State analysis, consideration of any issues that are raised, and time for discussion between the State and Tribes responding to the notification.

4. Tribal Governments were allowed a reasonable amount of time to respond to the notification. A minimum of 30 days is considered reasonable.

5. States, if requested by the Tribal Governments, provide an opportunity for an in-person meeting with Tribal representatives. A State does not need to have separate meetings with each Tribe, but may conduct one or more joint meetings with Tribes to discuss issues.

CMS will look to see that States have utilized these guidelines by looking at copies of correspondence sent by the State to the Tribal Governments notifying them of the State's intent to request a waiver or waiver renewal. Copies of any correspondence submitted by Tribal governments, and a discussion summary from any formal State-Tribal consultation meeting(s) as described in number 5 above, will also aid CMS's review of the proposed waiver or renewal request.

Because each State has developed a unique relationship with each of the Tribes within their borders, CMS will not compare the consultation process undertaken by a State with

the process used by other States. Each State process will be looked at based upon the thoroughness of the required documentation. If Tribes were notified of the proposed waiver in a timely manner and do not respond within the 30 day minimum timeframe, CMS will consider the intent of this letter was fulfilled by the State. Further, CMS staff encourages Tribal and State Governments to work directly with each other to the greatest extent possible in order to resolve any concerns and issues that arise.

This letter supplements the Tribal consultation guidance provided in the July 3, 1997 and the February 24, 1998 letters to State Medicaid Directors.

You will receive a copy of a letter to the Tribal Leaders in your State conveying a copy of this letter. In addition, please find enclosed a listing of the Native American Contacts (NACs), the States they cover, and their respective CMS Regional Office. If you have any questions regarding this policy, please contact the NAC in the appropriate CMS Regional Office.

We look forward to working with you in the future on this and other efforts.

Sincerely,

/s/

Penny R. Thompson
Acting Director

Enclosures

Cc:

CMS Regional Administrators

CMS Associate Regional Administrators
for Medicaid and State Operations

Lee Partridge
Director, Health Policy Unit
American Public Health Services Association

Joy Wilson
Director, Health Committee
National Conference of State Legislatures

Matt Salo

Director of Health Legislation
National Governors' Association

Yvette Joseph Fox
Director
National Indian Health Board

Michael Trujillo, MD
Director
Indian Health Service

Jack Jackson
Director, Government Relations
National Congress of American Indians

Native American Contacts

Region I - Boston	Irv Rich

DHHS/CMS
John F. Kennedy Federal Bldg., Rm 2325
Boston, Massachusetts 02203-0003
(617) 565-1247 (617) 565-1083 fax
Irich@CMS.gov
(Region I: Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island)

Region II - New York
DHHS/CMS
26 Federal Plaza, Room 3811
New York, New York 10278-0063

Carol Conciatori
(212) 264-3889 (212) 264-6814 fax
Cconciatori@CMS.gov
Joel Truman
(212) 264-3926 (212) 264-6814 fax
Jtruman@CMS.gov

(Region II: New York and New Jersey)

Region III - Philadelphia
DHHS/CMS
3535 Market Street, Room 3100
Philadelphia, Pennsylvania 19104
Tamara McCloy
(215) 861-4220 (215) 861-4240 fax
TMcCloy@CMS.gov
(Region III: Pennsylvania, Virginia, West Virginia, Maryland, Delaware)

Region IV - Atlanta
DHHS/CMS
The Atlanta Federal Center
Suite 4T20
61 Forsyth Street
Atlanta, Georgia 30303-8909
Carol Langford
(404) 562-7412 (404) 562-7483 fax
Clangford@CMS.gov
(Region IV: Kentucky, Tennessee, North Carolina, South Carolina, Florida, Georgia, Alabama, Mississippi)

Region V - Chicago
DHHS/CMS
233 N. Michigan Ave., Suite 600
Chicago, Illinois 60601

Pam Carson
(312) 353-0108 (312) 353-1787 fax
Pcarson@CMS.gov
Ruth Hughes
(312) 353-1670 (312) 353-1787 fax
Rhughes@CMS.gov

(Region V: Minnesota, Wisconsin, Michigan, Ohio, Indiana, Illinois)

Region VI - Dallas
DHHS/CMS
1301 Young Street, Room 833
Dallas, Texas 75202
Dorsey Sadongei
(214) 767-3570 (214) 767-0270 fax
Esadongei@CMS.gov
(Region VI: Texas, New Mexico, Oklahoma, Arkansas, Louisiana)

Region VII - Kansas City
DHHS/CMS
Richard Bolling Federal Bldg.
601 East 12 Street, Room 227
Kansas City, Missouri 64106-2808
(Region VII: Iowa, Nebraska, Missouri, Kansas)

Sharon Taggart
(816) 426-3406 (816) 426-3851 fax
Staggart@CMS.gov

Region VIII - Denver
1600 Broadway, Suite 700
Denver, Colorado 80202
(Region VIII: Montana, North Dakota, South Dakota, Wyoming, Colorado, Utah)

Jim Lyon
(303) 844-7114 fax 303 844-7054
Rlyon@CMS.gov

Region IX - San Francisco
DHHS/CMS
75 Hawthorne Street
5th Floor
San Francisco, CA 94105-3903
(Region IX: California, Nevada, Arizona, Hawaii)

Jean Fleury
(415) 744-3509 (415) 744-3517 fax
Jfleury@CMS.gov

Region X -Seattle
DHHS/CMS
2201 Sixth Ave., Room 911
Seattle, WA 98121-2500
(Region X: Washington, Oregon, Idaho, Alaska)

Ernie Kimball
(206) 615-2428 (206) 615-2363 fax
EKimball@CMS.gov