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November 17, 2015

Kitty Marx, Director
Tribal Affairs Office
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
801 Thompson Avenue
Rockville, MD 20852-1627
BY EMAIL TO: TribalAffairs@cms.hhs.gov

Re: *Comments of the Cheyenne River Sioux Tribe on Medicaid Services "Received Through" an Indian Health Service/Tribal Facility*

Dear Ms. Marx:

On behalf of the Cheyenne River Sioux Tribe, thank you for the time and effort you have invested in working with the Tribes in the Great Plains Region and the State of South Dakota to create these proposed policy changes. I have enclosed the Cheyenne River Sioux Tribe's comments on CMS' proposal below. I have confidence that, working together, we can improve health outcomes for our people.

Sincerely,

Harold C. Frazier
Chairman

cc: Julie Thorstenson, Health Department CEO
file

The blue represents the thunderclouds above the world where live the thunder birds who control the four winds. The rainbow is for the Cheyenne River Sioux people who are keepers of the Most Sacred Calf Pipe, a gift from the White Buffalo Calf Maiden. The eagle feathers at the edges of the rim of the world represent the spotted eagle who is the protector of all Lakota. The two pipes fused together are for unity. One pipe is for the Lakota, the other for all the other Indian Nations. The yellow hoops represent the Sacred Hoop, which shall not be broken. The Sacred Calf Pipe Bundle in red represents Wakan Tanka – The Great Mystery. All the colors of the Lakota are visible. The red, yellow, black and white represent the four major races. The blue is for heaven and the green for Mother Earth.

CHEYENNE RIVER SIOUX TRIBE
COMMENTS ON THE PROPOSED CHANGES TO
MEDICAID SERVICES "RECEIVED THROUGH" AN IHS/TRIBAL FACILITY

General Comments

On the whole, the Cheyenne River Sioux Tribe agrees with and supports the proposed changes, which are designed to enhance coordination of care for Medicaid-eligible Indians between Indian Health Service (IHS) and Tribal health facilities, State Medicaid programs and contractual agents.

The Tribe's first and primary concern is that the contractual agents and State Medicaid programs remain accountable to the originating IHS or Tribal facility. For meaningful coordination of care to occur, the originating facility should receive, at the least, consultation reports from the contractual agents, including billing records, so that the IHS or Tribal facility can maintain a complete medical history for each individual.

Further, States need to improve their current consultation policy for Medicaid State Plan Amendments (SPAs) to achieve more meaningful consultation. Under the proposed policy changes, services "received through" the IHS or Tribal facility will be defined as authorized services within the current Medicaid state plan benefit categories. If the State has not opted to include an authorized Tribal or IHS service within the state plan benefit categories, then the Tribe or IHS cannot receive reimbursement for eligible individuals who receive those services. Therefore, the proposed changes increase the Tribes' interest as a stakeholder in Medicaid SPAs. The current South Dakota consultation policy consists mainly of notice to the Tribes of proposed amendments through a number of avenues: mailings, a consultation website, and off-Reservation meetings. While these efforts are appreciated – a recent consultation meeting was scheduled to occur with a meeting of the Great Plains Tribal Chairmen's Health Board – a more meaningful partnership is needed.

For example, the state consultation policy itself can be developed jointly by the State and the Tribes. When SPAs are under development, individuals from the State Medicaid Program could meet with one-on-one with Health Directors, Health Boards or Health Committees – as determined appropriate by the Tribes – both to explain the coming changes and solicit input from that Tribe. This way, the State Medicaid Program staff would become familiar with each Tribe's health system and challenges. Rather than stand-alone meetings, SPA presentations could be included regularly on the regional health board

– in our case the Great Plains Tribal Chairmen's Health Board. However consultation policy is strengthened, giving Tribes a greater voice in the shape and scope of the Medicaid state plan will support the goal of CMS' proposal: increased coordination of care.

Comments on Specific Changes

1. Currently the 100% reimbursement rate applies to "facility services," meaning services as defined by the facility type under Medicaid regulations (clinic, in-patient hospital, etc.), not the services authorized at that particular IHS or Tribal facility. The proposed change would allow 100% FMAP for all services approved in the Medicaid state plan and which the Tribal or IHS facility is authorized to provide. The Medicaid state plan benefit categories include transportation and travel for medical services, home- and clinic-based attendant services, home and community care for the elderly and disabled, home health care for individuals with chronic conditions, and waivers for medical assistance. If Indian health facilities are authorized to provide any of these services, Medicaid would reimburse at 100% FMAP regardless of whether the service is included in list of services for that facility type in the Medicaid regulations. Services currently provided by IHS and the Tribe at Cheyenne River which would be included in this change are CHR visits, public health nursing, and non-emergency travel and transportation.

The Cheyenne River Sioux Tribe strongly supports this broader interpretation of the definition of facility services.

2. The second change follows the first. Rather than 100% FMAP for services provided in a Tribal or IHS facility or by its employees or contractual agents who provide a "facility service" under the Medicaid regulations, contractual agents would now also be able to provide any service within the Medicaid state plan which the originating Tribal or IHS facility is authorized to provide. However, the nature of the term "contractual" does not change, so that the services must be provided under written contract with the IHS or Tribal facility, the services are overseen by the Indian health facility, the person is considered a patient of the Indian health facility, and the Indian health facility keeps and controls the medical records for the patient including information about the contracted services from the contractor. A written contract is a flexible instrument, so that these agreements can be drafted to ensure the contractors abide by the Tribe's oversight requirements. The final rule or guidance regarding these policy changes should set minimum standards for that oversight.

The Cheyenne River Sioux Tribe supports this change, with the caveat described above that contractual providers must remain accountable to the IHS or Tribal facility by communicating with and providing all consultation and other medical records to the originating facility.

3. The third change would allow Tribes and IHS to specify in their contracts with outside providers whether the Indian health facility or the contractor would bill Medicaid. Currently only the Tribe or IHS can bill Medicaid for 100% FMAP services.

The Cheyenne River Sioux Tribe supports this change.

4. Currently, under South Dakota's Medicaid plan, payments for facility services – as defined by the facility type under Medicaid regulations – at IHS or Tribal facilities are reimbursed using the "IHS encounter rate," an all-inclusive rate published annually in the Federal Register. The proposed change to the definition of facility services under paragraph 1 would expand this definition of facility services to include all authorized services within the benefit categories of the state plan. The CMS proposal would set the payment amount for those expanded services, which would include CHR visits, public health nursing, non-emergency transportation and travel, at the rates the state plan sets for those services. Services previously defined as facility services under the Medicaid definition of facility type would be continue to be paid at the IHS encounter amount. Both service categories would be reimbursed at the 100% FMAP rate, but the how the amount reimbursed is determined would differ depending on whether the service falls under the older definition of facility service or the expanded definition of facility service.

The Cheyenne River Sioux Tribe believes this distinction is arbitrary. If the definition of facility service is interpreted to mean all services that the IHS or Tribal facility is authorized to provide within the state plan benefit categories, then the IHS encounter rate should apply to all such services.

5. South Dakota has not chosen to manage its Medicaid program through a managed care organization, so this policy change would not currently affect Medicaid-eligible Tribal members residing in this state. However, none of the proposed changes are objectionable, and would be beneficial should South Dakota ever incorporate managed care into its Medicaid program.

The Cheyenne River Sioux Tribe has no objection to this policy change, which should prove beneficial to Tribes in the states where it is implemented.