HUMAN SERVICES
DEPARTMENT
Susana Martinez, Governor
Brent Earnest, Secretary
Nancy Smith-Leslie, Director

November 17, 2015

Centers for Medicare & Medicaid Services
US Department of Health & Human Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850

Submitted electronically via TribalAffairs@cms.hhs.gov

Re: Medicaid Services "Received Through" an Indian Health Service (IHS)/Tribal Facility

Dear Sir or Madam:

The purpose of this letter is to submit written comments to the Centers for Medicare and Medicaid Services (CMS) from the New Mexico Human Services Department, Medical Assistance Division (HSD/MAD) about proposed policy changes regarding the circumstances in which 100 percent federal funding would be available for services furnished to Medicaid-eligible American Indian and Alaska Native (AI/AN) individuals through facilities of the IHS or Tribes.
New Mexico fully supports this policy change that will improve access to care for AI/AN Medicaid beneficiaries.

In response to the specific sections of the proposed change in the interpretation of section 1905(b) of the Act, New Mexico submits these comments:

1. Modifying the Second Condition

New Mexico strongly supports the proposed modification and the update to CMS's current policy on when the 100% FMAP is available. New Mexico expends considerable state funds on behalf of Native Americans because the 100% FMAP is not currently available for services rendered to Native Americans by non-IHS or Tribal providers. Extending the 100% match to "any service encompassed within a Medicaid state plan benefit category that the IHS/Tribal facility is authorized to provide" would expand access and enable the state to better handle the costs of our very successful Medicaid eligibility expansion.

Transportation is an important issue in New Mexico as many of the members from our 23 Tribes reside in rural areas. It is often difficult for them for travel to an IHS facility to obtain needed services. It is more complicated to travel outside their area for specialty services. Increased transportation availability will greatly impact access.

New Mexico looks forward to working with CMS to ensure correct claiming of FMAP for these additional services.

2. Modifying the Third Condition

New Mexico strongly supports the proposed modification; however we are concerned about the potential administrative burdens and limitations that the proposal seems to imply. For example, many of the enrolled Medicaid providers to which IHS refers clients and which routinely serve Native Americans do not have a formal contract with the IHS or with the many tribes whose members they serve. Sometimes there is an agreement with the IHS or a tribe, but this is not routine, and in no circumstances would a receiving facility have an agreement with all of the tribes, or even all of the IHS sites. And even if there were a contract in place it is unlikely that it would cover the delivery of all necessary services, including lab, imaging, physician consultation and follow up care.

We urge consideration of a policy that would enable Medicaid to determine whether a Native American had been seen in a Tribal or IHS facility within the past year or six months, and if so, claim the 100% match for services provided by the non-IHS facility or provider. Alternatively, the SMA could hold a cooperative agreement, or simply put in place a policy that says that as long as the provider was enrolled with Medicaid, and we had a record of them serving Native Americans, we should be able to claim the 100% match.

3. Modifying the Fourth Condition

New Mexico strongly supports the proposed modification, and in particular we urge the option of having the non-IHS facilities bill Medicaid directly. If the burden is placed on the already limited IHS facilities they will not be able to handle the billing, and should not be expected to do so.

4. Application to Fee-For-Service

New Mexico strongly supports the proposed modification.

5. Application to Managed Care

Since January 2014, most of New Mexico's Medicaid population overall is in managed care though an 1115 demonstration waiver called Centennial Care. Native Americans who do not receive long-term care services may opt-in to Centennial Care and approximately 32,000 have done so. CMS has indicated that this policy change may apply to 1115 waivers on a case-by-case basis. If CMS proceeds with the policy change we hope that the new policies could be embraced through a standard amendment to existing waivers. This would expedite and simplify adoption tremendously.

New Mexico welcomes the opportunity to work with CMS to explain how the state calculates its percentage of the capitation payment to Centennial Care Managed Care Companies. In sum, it is done actuarially based on encounters.

In conclusion, New Mexico thanks CMS for this opportunity to comment on this proposed policy change. We hope that the inclusion of these comments will prove constructive and useful as CMS finalizes guidance, and that consideration will be given to the positions outlined in this correspondence. If CMS has questions or requires additional information from New Mexico, please do not hesitate to contact me.

Thank you for your consideration.

Sincerely,

Nancy Smith-Leslie
Director