

# ONEIDA INDIAN NATION



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## ONEIDA NATION HOMELANDS

November 13, 2015

Ms. Victoria Wachino  
Director  
Centers for Medicaid and CHIP Services  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244  
TribalAffairs@cms.hhs.gov

RE: Medicaid Services "Received Through" an Indian Health Service/Tribal Facility

Dear Ms. Wachino:

Please accept the following comments on behalf of the Oneida Indian Nation, in connection with the Centers for Medicare and Medicaid October 27, 2015 request for comment on CMS' policy concerning, and interpretation of, the 100 percent Indian Federal Medical Assistance Percentage (FMAP) rule. The Nation strongly supports an expansion of CMS' existing interpretation of the FMAP rule, particularly with respect to purchased/referred care services (formerly known as contract health services). We urge CMS to revise its policy and interpretation to expand access and improve the quality of healthcare for American Indians.

The Oneida Nation government has been guided by three primary goals: to provide education, health and economic development to Oneida members and their families; to protect the Oneida Nation's sovereignty treaty rights and to establish and further the Nation's government to government relationships, and to acquire, develop and secure resources to meet these goals and enable the Oneida Nation's self-sufficiency. Contracting with the Federal government under the Indian Self Determination Education and Assistance Act has allowed the Oneida Nation to move forward toward its governmental goals.

As a self-determination contractor with IHS, the Oneida Nation provides a variety of medical, dental and behavioral health services free of charge to Oneida Members and to other members of federally-recognized tribes. The Oneida Nation is proud of the accomplishments of the Oneida Nation Health Services department and the Nation's ability to provide comprehensive and holistic care to its members and others. The Oneida Nation Health Services department has received numerous accolades for its programs and services. Notably in recent years, the Oneida Nation Health Services has been lauded by the U.S. Department of Health and Human Services for "exemplary performance" in providing quality care to its patients and undertaking proper documentation to "benefit patients and improve overall quality of care to patients."

The Oneida Nation not only provides services to its patients directly, but also coordinates and/or pays for services through outside providers through the purchased/referred care system. As you are aware, the purchased/referred care system is the payor of last resort. Payment for such services represents approximately 5% of the Oneida Nation's current total budget for its tribal health facility and we anticipate these costs will increase as health care costs continue to rise.

A revision and expansion of CMS' 100 percent FMAP rule to cover new services or eligibility groups made eligible for Medicaid reimbursement through referral arrangements that are connected to the Indian Health System will improve the quality of healthcare received by the Nation's members and patients. This change would also free up much needed resources for the Indian health system that will allow the Oneida Nation, along with IHS and other Indian nations, to focus on the specific needs of their respective populations and reduce the need for reliance on the purchased/referred care system.

### **Current CMS Interpretation**

In fulfillment of its special trust responsibilities and legal obligations to Indians, the United States Congress enacted the Indian Health Care Improvement Act (IHCIA). In furtherance of this stated policy of the IHCIA, Congress further authorized the Indian health delivery system to be reimbursed by the Medicaid program. IHCIA §402(a); 42 U.S.C. § 1396j. The 100 percent FMAP rule was enacted so that States would not have to bear the costs associated with implementing this new authority. *See* IHCIA §402(e); 42 U.S.C. § 1396d. Under CMS' existing interpretation, the 100 percent FMAP rule applies to (1) services provided within an IHS or tribally-operated facility; (2) services provided by other providers within those facilities through contractual arrangements with outside providers; and (3) services provided beyond the four walls of the facility through contractual arrangements, so long as the service is billed by the facility itself (i.e., contracts with outside specialists). Under this current interpretation, purchased/referred care services are not covered at all. This limited interpretation fails to take into account a significantly important aspect of Indian health care and the diversity of circumstances and challenges that each Indian nation and its respective community members face within this area.

### **CMS Should Expand its Policy Regarding the 100 Percent FMAP Rule to Cover Purchased/Referred Care Services.**

CMS should revise its current interpretation of the 100 percent FMAP rule to clarify that if a State makes a new service, program, or eligibility group available for reimbursement for a service provided to an American Indian at an IHS or tribal health facility, either directly or received through a referral with a connection to the IHS or tribally-operated facility, including through purchased/referred Care, then 100 percent FMAP will apply. This will make additional Medicaid services available to additional groups of individuals, which will allow overburdened Indian health provider resources to be put to immediate use elsewhere. CMS should also ensure that its interpretation of the FMAP rule is broad enough to take into account the diverse and variable techniques that tribally-operated health facilities utilize to manage referrals. It is critical that CMS not impose conditions that would result in any encroachment of the Oneida Nation's (or any Indian nation's) sovereign right to self-determination and to govern and operate their health programs in the manner that best addresses the unique needs of its members and community.

An expansion of the 100 percent FMAP rule policy is also consistent with the statutory language of the IHCIA. Section 402(e) of the IHCIA states that "the Federal medical assistance percentage shall be 100 per centum with respect to amounts expended as medical assistance for services which are received *through* an Indian Health Service facility whether operated by the Indian Health Service or by an Indian Tribe or Tribal organization..." (emphasis added). The clear language of the statute does not support

CMS' current interpretation. The language used by the statute is "through" not "in" a facility operated by the Indian Health Service or an Indian Tribe or Tribal organization. CMS' proposed policy revision to expand the 100 percent FMAP rule referred services, including purchased/referred care, is wholly consistent with the intent and language of the IHCA. Further, we are unaware of any prior judicial or administrative decisions upholding the current CMS policy that would hinder CMS' ability to alter its current interpretation, which is not supported by the clear language of the statute.

**Conclusion**

The cost to the Oneida Nation to administer and provide its health care programs continues to increase. The expansion of the 100 percent FMAP rule to purchased/referred care services will allow the Oneida Nation's tribally operated health program and the States to expand coverage for American Indians by either covering additional population groups or additional services at no cost to the State or the Oneida Indian Nation. This expansion will reduce the burden on IHS resources that are otherwise required to cover purchased/referred care services. The IHS and Indian nations will realize significant savings in their purchased/referred care services budgets and provide higher level of priorities of direct care.

The Oneida Nation urges CMS to expand its interpretation of the 100 percent FMAP rule to apply to referral services, including Purchased/Referred Care services when there is a connection to the IHS or tribal health facility.

We look forward to discussing this matter further with you and welcome your response to this letter.

Very truly yours,

ONEIDA INDIAN NATION

  
Meghan Murphy Beakman

MMB/dmt