



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

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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

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