



## 2019 National Advisory Committee and Workgroup Report

### Center for Medicare & Medicaid Services (CMS) Tribal Technical Advisory Group (TTAG)

#### PHOENIX AREA REPRESENTATIVES:

Ms. Angie Wilson  
Executive Director  
Washoe Tribal Health Center  
Washoe Tribe of Nevada

Mr. Jonathan Kitcheyan  
Council Member  
San Carlos Apache Tribe

Mr. Walter Murillo  
Chief Executive Officer  
Native Health

#### Purpose of the Center for Medicare & Medicaid Services Technical Advisory Group (CMS TTAG):

The TTAG will serve as an advisory body to CMS, providing expertise on policies, guidelines and programmatic issues affecting the delivery of health care for AI/ANs served by Titles XVIII, XIX and XXI of the Social Security Act of any other health care program funded (in whole or in part) by CMS.

#### SUMMARY OF ACTIVITY, ACCOMPLISHMENTS AND/OR ACTIONS:

Face to Face meeting held July 24-25, 2019 at the National Museum of the American Indian, Washington DC.

#### Agenda and Action items Review:

##### 1. **CMS Leadership – Calder Lynch, Acting Director, CMCS:**

Mr. Lynch was acknowledged in his role and for his attendance at the TTAG meeting. Mr. Lynch currently serves as the Acting Director of CMCS, replacing Chris Traylor. He has served as the Senior Counselor to Ms. Verma and has been actively engaged with representing the agency on the Community Engagement decision of the definition of an Indian. He has actively reported to TTAG and is aware of many of the issues we have raised with former Acting Director Traylor.

- Indian Tribes are recognized in the United States Constitution along with States and the federal government. The Supreme Court and other courts have confirmed that when Congress or the Executive branch is acting to further the United States' unique obligations to Tribes, such actions are political in nature and not racial classifications.
- Director Lynch reaffirmed the agencies policy on Tribal Consultation and acknowledged the review of our talking points. We discussed the significant impact the recent federal shutdown had on Indian country across the nation, and the importance of Medicaid coverage and third-party revenue in sustainability efforts for the ITU's. We reiterated that all our tribal clinics were operating off our third-party revenue during the shutdown period, thus the discussion at TTAG on issues and/or barriers for our tribal nations is imperative. We appreciate the ongoing collaboration between the agency and our tribal nations.

##### **A. CMS Leadership Attendance at TTAG Meetings**

- We reminded the agency that the TTAG is an important advisory body for CMS and the Administrator. Vetting issues through the TTAG avoids misunderstandings with Tribes and Tribal organizations down the road. Currently, Administrator Verma has not attended any of our TTAG meetings thus far, therefore, we noted her ongoing absence and emphasized the importance of her attendance in future meetings.



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- We also respectfully reminded CMS that the TTAG provides advice to the whole agency because both Medicare and Medicaid play a role in the Indian health care system; as such, we continued to request that leadership from both Medicaid and Medicare attend all future TTAG meetings to honor the government-to-government relationship and to ensure that our meetings are productive.

### **B. Work Requirements/Arizona Decision**

- Councilman Daniel Preston, Tucson Area TTAG Representative and I, reiterated the following points regarding the recent decision on the Indian Exemption for the Arizona Work Requirements Waiver.
- The AZ decision to exempt members of federally recognized Tribes from work requirements is an important step forward but does not fully address the request made by Tribes. While we appreciate Administrator Verma's leadership and Calder's leadership, we do not feel that the recent decision is an appropriate resolve and we feel strongly that the dialogue needs to remain open to reach a better conclusion to truly honor the trust responsibility.
- Health care is important for us, and our descendants. The trust responsibility doesn't stop with enrolled members, and CMS has ample legal authority to approve an exemption for IHS eligible Indians. We are concerned that the narrower exemption approved by CMS represents too narrow a view of the United States' trust responsibility. In addition, we feel that the decision does not acknowledge the sovereignty of our tribal nations, in that Tribes determine the enrollment process of our members. I (Angie), represent several Tribes that do not enroll their members until they are 18 years of age as they are then considered "voting" members of the tribe. This enrollment decision is well within our sovereign right to do so, but this decision is not a "race based" decision nor are our descendants any less Indian. These types of enrollment processes are political in nature. However, the recent federal decision regarding the Indian Exemption does not take these types of examples into consideration. We ask for continued dialogue to reach a resolve that works for Indian country.
- We know other States are continuing to submit these waivers, and that several waivers are under CMS review. We request maximum flexibility to Tribes and States. This is especially important for our Indian people as these policy decisions are sensitive in nature and pose concerns of imposed intergenerational trauma. It is imperative that the federal government allow Tribes and States the broadest flexibility in working together on the administrative process for enforcing the waiver, with the least amount of harm to our people.
- We have heard that CMS may be issuing further guidance around the work requirements. We remind CMS of its responsibility to consult with Tribes prior to the issuance of any policy that will impact Tribes.

### **C. Medicaid Block Grants**

Despite our request for Tribal Consultation at the last TTAG meeting, we are disappointed that CMS has created guidance around Medicaid block granting that is currently under review at OMB, but



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which CMS has not even discussed with TTAG or consulted with tribes about (“State Medicaid Director Letter: Medicaid Value and Accountability Demonstration Opportunity.”) We addressed the following issues with Director Lynch:

- CMS has a legal obligation to consult with Tribes on policies that will significantly impact Tribes.
- Block granting or any sort of cap on Medicaid will significantly impact Tribes. Congress provided for 100 percent FMAP reimbursement for services provided to AI/ANs in IHS and tribal facilities. Block grants are inconsistent with the congressional directive that CMS fully fund those services.
- Full federal funding of Medicaid services provided in IHS and tribal healthcare facilities must be protected and maintained. It is not enough to exempt AI/ANs from any state proposed Medicaid caps calculations. We request exemption from any block granting.
- Devoting resources to our health system is a federal responsibility and cannot be shifted to the states. States have been inconsistent with tribal consultation and have created barriers for our tribes in creating consistent access to care for AI/AN’s.
- This policy position has been previously been supported by the National Governor’s Association during past Medicaid reform efforts and is consistent with the United States trust and legal responsibilities to Tribes

### **D. Managed Care**

- TTAG reviewed several longstanding Managed Care issues we have repeatedly raised with Jim Golden, former Director of Managed Care Division. Some of the ongoing issues include MCOs not complying with regulations, untimely or non-payments issues, as well as care management. We feel these issues can be resolved by increased oversight of CMS with States and MCOs.
- We requested a specific symposium on Managed Care issues to address repeated concerns and provide stronger compliance and oversight between CMS to the States to the MCO’s.
- We request that a representative from the Division of Managed Care be present at each of the TTAG face-to-face meetings, as we continue to experience ongoing issues that need to be addressed.
- We have requested CMS provide an additional TTAG Subcommittee to focus on managed care issues. As such, the Subcommittee has been formed as of this TTAG meeting with a focus on immediate issues raised. While we have had issues with MCO’s within the Phoenix Area Tribes, I will serve on the subcommittee along with other TTAG members from MCO regions.

### **E. Safe Harbors**

- Last year the TTAG submitted comments to CMS in response to a request for information regarding the Physician Self-Referral Law. We included TTAG’s comments to OIG requesting



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safe harbors to the Anti-Kickback Statute for Indian health providers modeled on the existing safe harbor for FQHCs.

- We need a safe harbor for the same reasons FQHCs need a safe harbor – to coordinate care and save scarce federal resources. We feel if FQHCs have a safe harbor, there is no reason why Indian health providers should not have a similar safe harbor. We have been requesting an Indian specific safe harbor since 2012.
- We have recently met with OIG on these proposed safe harbors and look forward to ongoing discussion with them, as such, we requested Director Lynch to support for this effort.

### 2. Karen Shields, Deputy Director, CMCS

We welcomed Ms. Shields to her first TTAG meeting, as she attended to introduce herself as the Deputy Director of CMCS. As such, TTAG felt it important to address the following issues as we welcome her to the TTAG meeting.

- Indian tribes are recognized in the United States Constitution along with States and the federal government. There is a special relationship between the United States and Indian Tribes that creates a trust responsibility for the health care of Indian people.
- The Indian health system needs Medicaid to be financially viable and meet CMS certification requirements. Congress authorized the Indian health system to bill the Medicaid program to bring needed federal resources into the system and authorized 100% FMAP for Tribal facilities to ensure there would be no burden on states as a result. Medicaid funding is critical to help maintain facilities and provides access to AI/AN patients, many whom are low income and have no other form of coverage.
- The Indian health system is the medical home for most AI/ANs, which coordinates care and provides quality care for the beneficiaries they serve. This ensures that health care is not fragmented and AI/ANs receive the right care, at the right time, from the right provider.
- Tribal healthcare providers reinvest in their communities, and healthcare delivery systems are essential to local Tribal communities and economies. In many instances, Tribal health providers are the only source of health care in rural communities and Medicaid is essential to ensuring that quality care is delivered to the community.
- Because States have the primary role in designing their Medicaid programs, there are times where State designs do not adequately meet the needs of the Indian health system and can create artificial barriers to access to the Medicaid program for Indian people.
- Often, tribes and states can work out solutions to issues as they arise. However, there are times where CMS plays a critical role in ensuring the federal trust responsibility is fulfilled and tribal health programs are able to fully access Medicaid resources as Congress intended.



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### 3. 1115 Demonstrations, Judith Cash, Director, State Demonstrations Group, CMCS

#### A. Block grants

- Despite our request for Tribal Consultation at the last TTAG meeting, we are disappointed that CMS has created guidance around Medicaid block granting that is currently under review at OMB, without first discussing it with TTAG or consulting with tribes (“State Medicaid Director Letter: Medicaid Value and Accountability Demonstration Opportunity.”)
- CMS has a legal obligation to consult with Tribes on policies that will significantly impact Tribes.
- Block granting or any sort of cap on Medicaid will significant impact Tribes.
- Full federal funding of Medicaid services provided in IHS and tribal healthcare facilities must be protected and maintained.
- It is not enough to exempt AI/ANs from any state proposed Medicaid caps calculations, We are asking for exemption from block granting overall and that the federal trust responsibility for Indian health care be honored, and 100% FMAP for services received through the Indian health system is preserved and not impacted by any state proposals.
- Devoting resources to our health system is a federal responsibility and cannot be shifted to the states. This policy position has been previously been supported by the National Governor’s Association during past Medicaid reform efforts<sup>1</sup> and is consistent with the United States trust and legal responsibilities to Tribes

#### B. OMB Poverty Calculation:

- We are deeply concerned by the OMB's proposal to alter the consumer price indices that are used to estimate the Official Poverty Measure. This proposal has the potential to detrimentally impact AI/AN people, yet it is being undertaken without tribal consultation. If the proposal is adopted, AI/AN people will suffer from reduced access to the critical federal services and programs to which they are entitled under the trust responsibility.
- We requested CMS complete an analysis on how this proposal would affect the Indian Health System

#### C. Tribal Standard Terms and Conditions (STCs)

- The TTAG has been working with CMS to develop a set of Tribal STCs that would be included in all 1115 waivers. They are based on existing federal law, including tribal consultation requirements, Medicaid protections for AI/ANs and Indian managed care rules. We urge CMS to consider adopting policy to adopt Tribal STCs throughout implementation of 1115 demonstration waivers. Tribal STCs are an important mechanism to highlight and honor the Indian patient provisions and protection requirements



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### 4. Lina Rashid, Special Assistant to the Principle Deputy Director, CCIIO

#### A. RFI on 1332 Waivers

- TTAG submitted a response to the Request for Information Regarding State Relief and Empowerment Waivers on July 2, 2019. The letter detailed Tribal implications specific to the protections under the Affordable Care Act, Balanced Budget Act and American Recovery and Reinvestment Act. Our response reiterated that we seek to ensure that Indian specific protections within Section 1932 and 5006 remain in effect under any State Innovation Waiver plan approved by the HHS and Treasury Secretaries.
- The TTAG response also addressed Meaningful Tribal Consultation. The federal government intends to expand state flexibility, empowering states to address problems with their individual markets and increase coverage options for their residents. However, with respect to waiving statutory or regulatory requirements in connection with any program administered by a federal agency, tribes must not be left out of the conversation providing for flexibility in the dissemination of health care and health care insurance options and that Tribes and tribal health programs are protected under the Patient Protection and Affordable Care Act.
- We respectfully remind CMS and CCIIO in approving Section 1332 waivers, they must ensure states consider specific impacts to individual AI/ANs, and that prior to approving waivers, CMS should ensure states intended to preserve protections for AI/ANs under Section 1932 of the Balanced Budget Act (BBA) of 1997 and Section 5006 of American Recovery and Reinvestment Act (ARRA) of 2009. The BBA and ARRA provide a number of Indian-specific protections associated with Medicaid and Medicaid Managed Care. The agency must maintain and enforce the Indian-specific protections contained in Section 1932 and Section 5006 under such a waiver;

#### B. Re-Review of SBC's

- We inquired if CCIIO read though the TTAG's April 11th letter that included an analysis done by the Tribal Self-Governance Advisory Committee where they re- reviewed a sample of SBC documents for 2019 to assess their accuracy in describing the cost-sharing protections provided to eligible American Indians and Alaska Natives (AI/ANs) under the Affordable Care Act (ACA). In addition, requested CMS and CCIIO to enhance the relationship between the Tribe, the State, and the Insurance Commissioners.

### 5. SUPPORT Act, Kirsten Jensen, Director, Benefits & Coverage, DEHPG, CMCS; Jean Close, Dep. Director, Div. of Community Systems Transformation (DCST), DEHPG, CMCS\_

<https://www.grants.gov/web/grants/view-opportunity.html?oppld=317491>

- The Support Act Demonstration project to increase substance use provider capacity was presented to TTAG. In addition, CMS announced a commitment of \$50 Million to assist states with substance use disorder treatment and recovery.
- TTAG advocated that CMS engage with Tribes on their specific needs and priorities around increasing the capacity and availability of substance use disorder providers within our tribal



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communities. Often times we have significant challenges with recruitment and retention of SUD providers.

- We inquired how CMS is selecting the ten states that will participate in the planning grants, and is CMS prioritizing states that have large Tribal populations? We feel this is a significant need due to the impact of opioid overdose deaths amongst our American Indians and Alaskan Native populations.
- In addition, we advocated for opportunities to directly include Tribes as part of the government entities that can receive the planning grants. Having to go through States has not been successful for tribes with other programs.
- We request that CMS engage in meaningful Tribal consultation to learn more about the specific education, training, and reimbursement needs of substance use disorder providers who serve American Indian and Alaska Native populations
- We request that CMS direct States receiving planning grants under this Section to partner with Tribes when assessing gaps and needs around availability of behavioral health providers, and to prioritize increasing the capacity of, and total number of providers, who directly serve American Indian and Alaska Native communities.

### **6. Children’s Health Insurance Program – AI/AN Funding Opportunity, Amy Lutzky, Director, Div. of State Coverage Programs (DSCP), CAHPG, CMCS**

- TTAG received a general presentation on the Children’s Health Insurance Program, promoting funding for outreach efforts for CHIP coverage.
- The outreach efforts continue to be sent out through Tribal Affairs, States, etc. and we continue to support the effort for tribes and/or tribal organizations to apply.

### **7. Long Term Support Services and Outreach Enrollment Update, Kim Blessing, Vice President for Communications, Kaufman & Associates, Inc; Jonathan Collins, Project Manager II, KAI**

- CMS Programs Outreach report was submitted by KAI. Brochures, social media campaign, monthly e-newsletter “covering Indian Country”, and redesigned outreach and education section of CMS.Gov.
- Long Term Support Services Campaign Goal includes the Technical Assistance Center with the latest LTSS research, best practices, literature, program examples, etc.
- Outreach numbers were reported as follows:
  - Print ads – 32Million impressions
  - Exhibited at 27 events
  - Covering Indian Country subscriptions at 34,281



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- LTSS newsletter at 46,124 subscribers

### 8. HRSA Tele-health Advancement Program, Bill England, Director, Office for the Advancement of Telehealth Federal Office of Rural Health Policy, HRSA

- Director England reviewed the HRSA initiative to expand telehealth capacity across the nation. As such, the federal office of rural health policy includes community-based divisions piloted programs for rural communities and expanding the community health gateway. In addition, includes hospital state division with grants focusing on performance and quality improvement for small rural hospitals. Also, the office of advancement of telehealth includes telehealth network grants, telehealth resource centers, telehealth centers of excellence and licensure and portability.
- In addition, Director England promoted the Universal Service Program as an important source of funding for broadband to enable telehealth on tribal lands.

### 9. Emergency Triage, Treat and Transport (ET3 Model), Adam Obest, Management Analyst DSEP, ET3 Model, CMMI

<https://innovation.cms.gov/initiatives/et3/>

- Mr. Obest provided a review of the ET3 model, which is the Emergency Triage, Treat, and Transport (ET3) Model as a voluntary 5-year CMS payment model that provides greater flexibility and new payments to ambulance care teams for Medicare beneficiaries.

### 10. Division of Tribal Affairs: Kitty Marx

- Vacancies
- FY2020 Budget
- ITU Trainings
- I have provided the attachment of the ITU training schedule as a supplemental document to this report\*\*

### 11. Subcommittee Reports:

- ACA Policy Chairman – Melissa Gower
- 1115 Tribal Waivers Chairman – Judy Goforth (absent, update by Melissa Gower)
- Outreach and Education Chairman – Angie Wilson
- Long Term Supportive Services Chairman – Judy Goforth (absent)
- Data Chairman – Mark LeBeau (absent, update by Ed Fox)
- Behavioral Health Chairman - Dave Panana/Dr. Susan Karol
- Strategic Plan Chairman – Chairman Allen/Kitty Marx
- CMS Tribal Consultation Chairman – Chairman Allen/Kitty Marx
- Managed Care Subcommittee developed – Lynn Twerllinger





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**12. Working Session 2019-2024 TTAG Strategic Plan Development: Devin Delrow, NIHB Federal Policy Director**

- Devin presented the update on our TTAG strategic plan. The initiatives continue to strengthen our footing in the administration and evaluation of federal programs/resources in Indian country.
- The MMPC and TTAG have started refining input to the new strategic plan as this was the primary focus of our annual strategy retreat held May 2019. As such, we continue to work on the creation of new strategic objectives for review by the agency.

**13. Meeting Adjourned**

**Remaining TTAG Conference Calls and Face to Face Meetings for 2019  
The Centers for Medicare & Medicaid Services Tribal Technical Advisory Group (CMS TTAG)**

<b>Date/Event</b>	<b>Location</b>
September 11, 2019 Conference Call: 2:30-4:00 PM EST	Call in number: 1-877-267-1577 Meeting Number: 990 945 911
October 9, 2019 Conference Call 2:30-4:00 PM EST	Call in number: 1-877-267-1577 Meeting Number: 993 600 751
November 7-8, 2019 Face to Face Meeting	National Museum of the American Indian, Fourth & Independence Ave. S.W. Washington, D.C.