

SUBMITTED VIA ELECTRONIC MAIL
(gennifer.moreau@alaska.gov)

August 17, 2015

Ms. Gennifer Moreau
Medicaid State Plan Coordinator
Alaska Department of Health and Social Services
4501 Business Park Blvd.
Bldg. L
Anchorage, AK 99503

Re: Dear Tribal Health Leader Letters on Proposed Medicaid
State Plan Amendments

I. Introduction.

On July 17, 2015 and July 21, 2015, the Alaska Department of Health and Social Services (the Department) released Dear Tribal Health Leader letters initiating Tribal consultation on a series of proposed Medicaid state plan amendments (SPAs). The first consultation concerns the Department's designation of authority to the Alaska federally-facilitated Marketplace (FFM) to make binding Medicaid eligibility determinations as authorized by the Patient Protection and Affordable Care Act (ACA). The second outlines the State's plan for submitting SPAs necessary to implement Medicaid expansion under the ACA. Thank you for the opportunity to comment on these important matters.¹

The Kodiak Area Native Association (KANA) was formed in 1966 as a 501 (c) (3) non-profit corporation to serve the Alaska Natives of the Koniag region which includes the City of Kodiak and six outlying villages; Akhiok, Karluk, Larsen Bay, Old Harbor, Ouzinkie and Port Lions. KANA is governed by 10 Board of Directors members with one representative from each of the Tribes, and one representative for Karluk and the "at-large" Native population on Kodiak Island. Services provided by KANA include an Ambulatory Medical Clinic, Dental Clinic, Pharmacy, Contract Health Services, Community Health Aide Program, Substance Abuse Prevention, Intervention/Outreach, Social Services, Non-Clinical Community Mental Health, Women, Infants and Children (WIC) Program, Vocational Rehabilitation, Early Childhood Programs, Education, Employment and Training Programs, Infant Learning Program and Tribal Operations.

¹ Because we have similar comments concerning consultation, outreach, and education with regard to both SPAs, we have combined our responses into one document for ease of reference.

KANA applauds the State's determination to expand Medicaid. As noted by the Alaska Native Tribal Health Consortium, this will lead to program eligibility for over 41,000 uninsured Alaskans, including 15,700 Alaska Natives and American Indians (AN/AIs).² This is a tremendous achievement for the State of Alaska and will provide immeasurable benefits for its citizens. Thank you for your dedication towards and perseverance in improving health outcomes in Alaska.

We also support the Department's decision to allow the Alaska FFM to make binding Medicaid eligibility decisions. This creates another portal for applications and simultaneously protects the interests of Alaskans, since denials can be appealed to either the FFM or to the State. Our principal concern is ensuring that AN/AIs and other Alaskans have ready access to accurate, easy to read informational materials about expanded eligibility and program enrollment and appeal options.³ It is therefore critical that the Department accompanies the expansion and enrollment restructuring proposed in the SPAs with extensive, targeted, and culturally appropriate training, outreach, and education.

The Alaska Tribal Health System stands ready to assist the Department in these important matters. Accordingly, because time is short for everyone – a trade-off we gratefully accept in order to have expansion occur on September 1, 2015 – we offer suggestions for how to improve communication and outreach material. Please do not read these proposals as critical of the system or of these SPAs. They simply seek to move the process forward as quickly as possible, and to help the State overcome the challenges it has accepted for the benefit of AN/AIs and all Alaskans.

II. Discussion.

The ACA offers financial incentives for states to expand their Medicaid programs to cover an "adult group" of individuals under sixty-five years of age with income up to 138% of the federal poverty level.⁴ Whether or not the state expands Medicaid, the ACA also requires

² ALASKA NATIVE TRIBAL HEALTH CONSORTIUM, HEALTHIER ALASKANS CREATE A HEALTHIER STATE ECONOMY 5 (Feb. 1, 2013).

³ Although comprising only about 19.5% of the State's total population, ALASKA DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT, ALASKA POPULATION OVERVIEW – 2013 ESTIMATES 13 tbl. 1.4, AN/AIs make up nearly 40% of the State's Medicaid population. Alaska Department of Health and Social Services, Office of the Commissioner, Tribal Health, *available at* <http://dhss.alaska.gov/Commissioner/Pages/TribalHealth/medicaid.aspx> (last visited July 29, 2015). Despite this proportional overrepresentation in the program, AN/AIs still remain under enrolled in Medicaid as compared to their overall eligibility. *See, e.g.*, NATIONAL RURAL HEALTH ASSOCIATION ISSUE PAPER, AMERICAN INDIAN AND ALASKA NATIVE HEALTH ISSUE PAPER 2 (Nov. 2006).

⁴ *See* 42 U.S.C. § 1396a(10)(a)(i)(VIII); 42 U.S.C. § 1396d(y); 42 C.F.R. § 435.119. The Supreme Court held in 2012 that the federal government could not require states to expand

Marketplaces to simultaneously determine eligibility for both Medicaid (for most of the population) and for Marketplace qualified health plans (QHPs), cost-sharing, and tax credits.⁵ States with FFM's may choose either to treat the FFM's Medicaid eligibility determination as a definitive, final evaluation, or to have the FFM send a non-binding "assessment" of eligibility to the State Medicaid Agency, which will then itself make the ultimate eligibility determination.⁶ States may also delegate FFM's the authority to conduct hearings concerning the denial of Medicaid eligibility, provided that individuals retain the right to appeal to the State Medicaid Agency if they so choose.⁷

Based on the two Dear Tribal Health Leader Letters and subsequent discussions with the Department, it is our understanding that:

- In the expansion SPA, the Department proposes to qualify the current Alaska State Plan as the benefits package for the newly-eligible adult group, as well as to submit SPAs on federal matching rate claiming and Alternative Benefit Plans that are required by law as part of Medicaid expansion.
- In the eligibility SPA, the Department proposes to grant the FFM the authority to make the full and final Medicaid eligibility determination and to administer appeals related to the FFM-based determinations (unless, as required by law, the applicant requests that the State administer the hearing).

As noted, KANA enthusiastically supports Medicaid expansion under the proposed terms, and we applaud the leadership of the Governor and the Commissioner on this vital public health matter. We also support the delegation of Medicaid eligibility determinations to the FFM, and hope that this will allow the State to divert scarce resources to improving other aspects of the Medicaid delivery system. We appreciate the efforts the Department has made already to keep the Alaska Tribal Health System informed about the proposed changes and the efforts it is making to simplify, rather than complicate, the system. Our goal in submitting these comments is to assure that AN/AI beneficiaries are encouraged to enroll in Medicaid and Denali KidCare when they are eligible.

Tribal health programs already face numerous unique difficulties in encouraging eligible AN/AIs enrolled in Medicaid. Because AN/AIs receive many health services at no charge from

Medicaid as a condition of program participation, rendering the expansion decision optional on a state-by-state basis. *See generally Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566 (2012).

⁵ 42 U.S.C. § 18083; 45 C.F.R. § 155.305(c).

⁶ 42 C.F.R. §§ 431.10(c)-(d), 435.1200; CENTERS FOR MEDICARE AND MEDICAID SERVICES, MEDICAID AND CHIP FAQs: COORDINATION BETWEEN MEDICAID/CHIP AND THE FEDERALLY-FACILITATED MARKETPLACE 2 (Apr. 2013).

⁷ 42 C.F.R. §§ 431.10(c)(1)(ii).

the tribal health system, they have less financial incentive to enroll in Medicaid than most other citizens. Many have difficulty accessing and navigating the eligibility and application materials, especially those who reside in small villages or who lack reliable internet services. Some are reluctant to share their financial information or distrust Medicaid and other government programs, some may wish to avoid even potential liability for Medicaid estate recovery, and others simply do not want to expend the time and effort to enroll. Many who try to apply might be unclear about some of the more technical aspects of the process, such as what types of AN/AI-specific income counts towards an individual's Modified Adjusted Gross Income (MAGI), or the relationship between the simultaneous Medicaid and QHP applications. Absent the proper level and type of outreach and education about the new eligibility group and enrollment process, many AN/AIs will be discouraged from applying for Medicaid in the first instance or from challenging a declined application.

We think that the best way to address these challenges is to ensure that AN/AIs are given access to culturally and linguistically appropriate materials that can clarify potential questions arising from the SPAs. For example:

- Can I still apply for Medicaid with the State, or can I only apply through the Marketplace?
- Do the Marketplace and the State have the same Medicaid eligibility criteria?
- Are the benefits for the new adult group the same as for people who were eligible for Medicaid prior to the ACA?
- If I applied for Medicaid in the past and didn't qualify, does that mean I'm not eligible for the new adult group?
- Do I have to fill out a full Marketplace application if I only want to apply for Medicaid? Does that require me to purchase a health care plan from the Marketplace?
- What am I supposed to list as my MAGI?
- If the Marketplace application says that I qualify for cost-sharing reductions or tax credits, does that mean I don't qualify for Medicaid?
- If the Marketplace says I'm eligible for Medicaid, does that mean I'm automatically enrolled or do I have to contact the State Medicaid office? How will I know when I'm enrolled?
- What do I do if the Marketplace says I don't qualify for Medicaid?

In order to evaluate the most effective materials to use, and mediums to distribute, information concerning these and related issues, we request that the Department and the FFM continue to work closely with stakeholders such as the Alaska Native Tribal Health Consortium

and Alaska Native Health Board, among others, as you finalize and implement the proposed SPA. The tribal health community looks forward to helping the Department create and disseminate outreach and educational materials, eliminate barriers to AN/AI enrollment, and achieve our common goal of ensuring that all Alaskans have access to affordable and high-quality health care services.

III. Conclusion.

KANA greatly appreciates the State's decision to expand Medicaid. We also support the Department's proposal to delegate Medicaid eligibility determinations and appeals to the Alaska FFM. In order to ensure that AN/AIs are kept informed about both developments and are kept abreast about changes to eligibility requirements and the application and enrollment process, we request continued consultation with both the Department and the FFM to discuss strategies for minimizing logistical difficulties during the transition period, properly informing AN/AIs of their rights and responsibilities, and maximizing AN/AI Medicaid enrollment.

Thank you for your demonstrated commitment to AN/AI health. We stand ready to work with you in trying to achieve our objectives during this transition.

Respectfully,



Andy Teuber,
President and CEO