THE STATE of ALASKA
GOVERNOR BILL WALKER

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January 30, 2018

Dear Tribal Health Leader,

RE: Tribal response to DHSS Tribal Consultation Letter for the proposed 1115 Demonstration Project - November 28, 2018

Thank you for the verbal and written comments provided in response to DHSS consultation letter for the proposed 1115 demonstration project. The department appreciates the effort put forth by Alaska tribal health partners in providing DHSS with detailed and knowledgeable input for this important project.

The department plans to submit the 1115 demonstration project application with some revisions as suggested in your comments. In addition, some recommended revisions were deferred, and some requested revisions were not incorporated. The state has undertaken to address each recommendation by responding in a new column added to the tribal consultation matrix labelled "state response."

In addition to the detailed response on the tribal consultation matrix, the state would like to provide an overview of some of the recommendations received.

The following issues were raised through tribal comments on the Behavioral Health Section 1115 Waiver Application:

1. ***Request to expand eligibility for waiver services to people over the age of 65*** - *Tribes point out that "Native cultures take care of children and elders, yet elders would be excluded from waiver services [and that] although persons 65 and older are eligible for Medicare, Medicare will not cover the behavioral health needs of this population adequately."*

   Because of the timeline for submission of the waiver, the state commits to continuing to work with the actuarial analysis and cost neutrality requirements to evaluate adding the over 65 group during the negotiation period; however this group will not be included in the initial draft submitted to the Centers for Medicare and Medicaid Services (CMS).

2. ***Requests related to provider scope of practice*** - *Tribes requested that CHA/Ps and BHA/Ps be considered providers for the purposes of delivering waiver services such as 23-hour crisis stabilization, continuous nursing, and peer support services.*

   In general, the state supports the concept of CHA/Ps and BHA/Ps providing services that are within their scope of practice. However, please note the following:
   - Regarding 23-hour crisis stabilization services: CHA/Ps and BHA/Ps will not be allowed to provide psychiatric supervision for 23-hour crisis stabilization services because the services are not included in the scope of practice for those providers.

- Regarding whether CHA/Ps and BHA/Ps can meet continuous nursing requirements: Practitioner-level only Community Health Aide/Practitioners will be allowed to meet the continuous nursing requirement, but not Behavioral Health Aide/Practitioners given that these services are outside the scope of practice for all BHA/P certification levels.
- Regarding whether Community Health Aide/Practitioners and Behavioral Health Aide /Practitioners can be considered "peers" for the purpose of providing peer support services: In order for CHA/Ps and BHA/Ps to provide peer-based crisis intervention services, the CHA/P or BHA/P must meet criteria for providing peer services. Note that if CHA/Ps or BHA/Ps provides peer support services CHA/Ps and BHA/Ps will bill for peer support services.

In addition, CHA/Ps are eligible to provide medical support services (services that are provided in conjunction with peer-based crisis intervention services), but BHA/Ps are not because these services exceed the current scope of practice. For purposes of clarification: the state anticipates that medical support will be billed as a separate service.

3. ***Requesting that waiver services continue for recipients who have improved to the point that they no longer meet the waiver eligibility criteria*** - *In order to prevent future readmissions to hospitals and save costs, the Tribes have requested that waiver services remain available to those who are responding well to treatment but no longer meet eligibility criteria.*

   Because of the timeline for submission of the waiver, the state commits to continuing to work with the actuarial analysis and cost neutrality requirements to evaluate whether services would continue for those who have improved to the point that they no longer meet eligibility criteria.

4. ***Bundling home-based family treatment services for Group 1*** - In the application, the state describes levels of home-based family treatment services as follows:

   Services include individual and family therapy, crisis intervention, medication services, parenting education, conflict resolution, anger management, and ongoing monitoring for safety and stability in the home. Two different levels of home-based family treatment would be offered: Level 1 home-based family treatment services are provided for children at moderate risk of out-of-home placement, and Level 2 home-based family treatment services are provided for children at high risk of out-of-home placement. Level 3 services would focus on family therapy.

   Tribes point out that services appear to be "bundled" and suggest that bundling services precludes tribal providers from offering specific services that might be called for based on clinical determination. They have two recommendations:

   - *Eliminate bundled levels and allow providers to use clinical judgment to determine which individual services should be included in treatment plans; and*
   - *Clarify that home-based family services will not be a bundled payment, allowing multiple providers to provide services.*

While the state recognizes the tribes' concern about deferring to clinical judgement, the state has intentionally created these bundled levels of services based on clinical evidence and cost containment goals. The state is concerned that allowing for the provision of services on an "a la carte" basis would result in fragmented services that are not cost effective and fail to meet clinical goals.

5. ***Suggestions for expanding the array of services to be offered under the waiver*** - *Tribes have several requests to expand services under the waiver. These include:*
   - *Adding 23-hour crisis stabilization services for the Group 3 target population (in addition to Groups 1 and 2);*
   - *Adding respite services for foster, resource, or kinship providers;*
   - *Adding "modified" Assertive Community Treatment (ACT) services;*
   - *Adding capacity (beds) for adult residential mental health services; and*
   - *Providing the complete continuum of ASAM levels of care; and*
   - *Adding telemedicine as a mode of service delivery (already allowed in the state plan).*

   The state will consider this request after conducting actuarial analysis that demonstrates the impact of providing this additional service on the budget neutrality requirements for the waiver. This analysis will occur during the negotiation period.

6. ***Requests to exempt American Indian/Alaska Native (AI/AN) people and providers*** - *Tribes have requested AI/AN people or provider exemption in two areas: 1) for criteria of those who qualify for services under the Group 2 target population and 2) for areas that will be under the jurisdiction of the ASO.*

   1) *In addition to other criteria, the application describes the Group 2 target population as: Individuals in this target population are between 18-64 years of age and have utilized three or more of the following acute intensive services in the past year:*
      - *Inpatient psychiatric hospital stay;*
      - *Inpatient mental health or substance abuse general hospital stay;*
      - *Inpatient hospital medical/surgical, non-delivery, inpatient maternity delivery, and other inpatient stay; or*
      - *Outpatient general hospital emergency room visit.*

      Tribes suggest that the most effective solution is to create an exemption for AI/AN people. Alternatively, they suggest that tribal clinic crisis stabilization services be included as an equivalent level of acute intensive services described above.

      The state will work with tribal heath organizations and CMS to develop a definition that narrowly captures emergency room services but can establish a proxy for remote areas – this definition will include medical and/or psychiatric level of care.

   2) *The tribes are requesting that AI/AN people and providers be exempted from any services that may be provided by the ASO, including individual enrollment or assignment, and provider licensing, certification, and credentialing.*

While the state is not prepared to exempt AN/AI people and providers from the jurisdiction of the ASO, we are committed to continuing the discussion around how to take tribal needs and concerns into consideration when establishing the ASO infrastructure, provider certification process, and data collection requirements and will continue to consult with the Tribes on all matters related to the ASO.

In closing, the department would like to affirm that it is the intent of the state to continually develop the waiver throughout the five-year demonstration project. Tribal consultation will continue to be sought as we seek to achieve the outcomes proposed in the Alaska 1115 waiver application.

Sincerely,

Courtney O'Byrne King, MS
Medicaid Assistance Administrator IV
State Plan Coordinator

Enclosure