

## **Arizona American Indian/Alaska Native 1115 Demonstration Waiver Request**

### **Request**

To exempt Indian Health Services (IHS) and 638 facilities from the benefits and eligibility restrictions imposed on the broader AHCCCS program.

### **Outstanding Issues as Identified by CMS**

#### *1. State Match for services provided to Non-American Indians at IHS and 638 facilities*

CMS raised the issue of the State paying the non-federal share for non-American Indians receiving services at IHS and 638 facilities. The State has agreed to cover the match but only if CMS can accept an administratively manageable process to provide a proxy for the amount based on statistically valid sampling of non-AIs receiving services at IHS and 638 facilities.

The issue is that the State's data in its eligibility system regarding who is American Indian is self-reported data. Based on the State's data obtained from enrollee self-identification, the original estimate of payments for services obtained by non-AI at IHS and 638 facilities was approximately \$12 million. After consulting with tribes and IHS and 638 facilities, the State learned that more accurate data is captured at the point of service. To get a better understanding, the State's data on the individual claims within that \$12 million was matched against data obtained from IHS and 638 facilities for the time period of 7/1/09 – 6/30/10. With most of the facilities reporting, and capturing the data from all three IHS Areas, that \$12 million fell to under \$2 million. This is out of \$537,657,180.08 in total dollars paid to IHS and 638 facilities over that same time period. The Phoenix Area IHS, the largest of the three areas, reports that 0.4% of its 107,961 total active users is non-Indian.

The results of this data exchange and clarification of the policy on service to non-beneficiaries of the IHS and 638 system were presented to CMS electronically on August 11, 2011.

The State, therefore, proposes to use the data exchange already conducted, which captures complete claims data for the time period of 7/1/09 – 6/30/10, as a proxy for the total amount for which the State would have to pay a match. Based on consultation, the State believes that this number should not fluctuate much from year to year. However, the State is willing to discuss with its tribal partners updating the figure through this data exchange each year.

As part of the phone conference held on December 9, 2011 with CMS, the State has also agreed to reach out to its tribal stakeholders and obtain additional data from IHS and 638 facilities to show the breakdown of claims for services provided to non-Indians. The data is expected to show that most of these expenses are in the area of emergency services under EMTALA requirements and services to pregnant women who are carrying an American Indian child. The request for this additional data was sent by the State to tribal stakeholders December 9, 2011.

#### *2. Conflict between IHS and 638 requirements and Medicaid comparability*

CMS raised the concern that if IHS and 638 facilities are exempt from benefits and eligibility restrictions that there may be an influx on non-American Indians seeking to receive services at IHS

and 638 facilities that they cannot access from other providers as a Medicaid beneficiary in Arizona. The State does not believe this is an issue for Arizona.

First, pursuant to the terms of the State's 1115 waiver, non-American Indians enrolled in the AHCCCS program must enroll in a health plan. The beneficiary is assigned to a PCP and restricted to the list of providers that are part of that health plan's provider network. IHS and 638 facilities are not part of the managed care network and are not contracted with the AHCCCS contracted health plans. MCOs do not pay IHS and 638 facilities. These facilities are, however, available to MCO enrolled American Indians, who have the ability to obtain services at IHS and 638 facilities on a fee-for-service basis; those claims are paid directly by the State.

Second, most IHS and 638 facilities are located in geographical areas that are not readily accessible to non-tribal members. Moreover, considering the small numbers of non-Natives served at IHS and 638 facilities as demonstrated above, the State does not believe non-Native AHCCCS members will go to these facilities for their care. However, in consideration of CMS' concern, AHCCCS would be willing to consult with tribal partners about developing a monitoring survey or tool to ensure there is not an influx of non-natives.

### 3. *Civil Rights Issues*

During the call with CMS on December 9, 2011, CMS identified that it would speak with its legal counsel, which still has concerns regarding potential civil rights violations. The State understands that CMS must conduct due diligence. The State merely wishes to express that it stands in agreement with its tribal partners that the federal law is clear on this point. American Indians – members of federally recognized tribes – are a political classification as they are members of sovereign nations, and not a racial classification. Therefore, the 14<sup>th</sup> Amendment is not implicated. This distinction – political classification versus racial classification – is at the core of the unique trust relationship between the federal government and sovereign Indian tribes.

### **Eligibility Operations**

The FFS American Indian program at AHCCCS is known as the American Indian Health Program (AIHP). For purposes of eligibility under the Demonstration request, AHCCCS would create AIHP Select. This means that individuals who are currently not enrolled with AHCCCS and who present at IHS and 638 facilities would be screened for Medicaid eligibility using Health-e-Arizona. The applicant would go through the typical cascading process. Under the current system, a childless adult applicant would be denied. Under the AI/AN Demonstration, once it is determined that the applicant is a childless adult, and meets all other eligibility criteria, the applicant will be made eligible as a childless adult under the AIHP Select.

AIHP Select will permit childless adults to be made eligible for Medicaid and to receive services only at IHS and 638 facilities. The AIHP Select beneficiary is limited to the service array available at the IHS or 638 facility and Medicaid covered services, including those that would be offered under the exemption (e.g., services by a podiatrist).