Report to the Social Services Appropriations Subcommittee

Status Update on Moving More Medicaid Claims from American Indian and Alaska Native Medicaid Members to a Higher Match Rate

Prepared by the Division of Medicaid and Health Financing

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UTAH DEPARTMENT OF HEALTH

Purpose

This report is submitted in response to a motion from the Social Service Appropriations Subcommittee regarding the Budget Deep-Dive into Medicaid Reimbursement Rates Issue Brief released in September 2017. This report provides an update on the Utah Department of Health's (UDOH's) efforts to evaluate opportunities to move more Medicaid claims from American Indian and Alaska Native (AI/AN) Medicaid members to a higher federal match rate.

To determine what opportunities may exist, UDOH is evaluating two policy areas. First, UDOH reviewed the Centers for Medicare and Medicaid Services (CMS) guidance provided in a 2016 State Health Officers (SHO) Letter that describes the scope of services considered to be "received through" an Indian Health Service (IHS)/Tribal facility that may qualify for 100 percent federal match. Next, UDOH is examining its current practices related to when it considers a claim for an AI/AN member to be eligible for 100 percent Federal Medical Assistance Percentage (FMAP) claiming and when it does not.

Department of Health Review of the CMS "Received Through" Guidance – Status Update

The federal government covers 100 percent of costs for services provided to AI/AN Medicaid members for services received through an IHS or Tribally-operated facility. In 2016, CMS released guidance, through a SHO letter that describes the scope of services considered "received through" an IHS/Tribal facility that may qualify for 100 percent federal match.

The 2016 Guidance outlines CMS' updated payment policy regarding the availability of the 100 percent FMAP for services "received through" an IHS/Tribal facility. As explained in the SHO letter, a service will be considered to be "received through" an IHS/Tribal facility for purposes of 100 percent FMAP, to the extent that the IHS/Tribal facility is authorized to provide the service, and the service is covered under the approved Medicaid state plan. The SHO letter explains that the 100 percent FMAP is available for services that are either furnished directly by the IHS/Tribal facility to a Medicaid-eligible AI/AN member or by a non-IHS/Tribal provider when the service is provided at the request of an IHS/tribal facility practitioner on behalf of his or her patient and the patient remains in the Tribal facility practitioner's care in accordance with a written "*Care Coordination Agreement"*.

It is up to the IHS/Tribal facility to decide if it wants to enter into a Care Coordination Agreement with the non-IHS/Tribal providers to whom they refer their patients. Participation is completely voluntary. The CMS SHO letter provides clear guidance that States cannot require AI/AN Medicaid members to receive services through an IHS/Tribal facility in order to access the 100 percent FMAP, nor do states have the authority to require any AI/AN Medicaid member to receive services through an IHS/Tribal facility. The SHO Letter states:

> *"Nothing in this letter affects the entitlement of AI/AN Medicaid beneficiaries to freedom of choice of provider under section 1902(a)(23) of the Social Security Act. State Medicaid agencies may not, directly or indirectly, require AI/ANs who are eligible for Medicaid to receive covered services from IHS/Tribal facilities for the purpose of qualifying the cost of*

their services for 100 percent FMAP. Similarly, neither state Medicaid agencies nor IHS/Tribal facilities may require an AI/AN Medicaid beneficiary to receive services from a non-IHS/Tribal provider to whom the facility has referred the beneficiary for care. Nor can a state delay the provision of medical assistance by requiring that beneficiaries initiate or continue a patient relationship with the IHS/Tribal facility. Finally, federal Medicaid law does not require either IHS/Tribal facilities or non-IHS/Tribal providers to enter into the written care coordination agreements described in this SHO.[1] *"*

As described above, states do not have authority to require AI/AN Medicaid members to receive services through an IHS/Tribal facility in order to access the 100 percent FMAP, nor can they require IHS/Tribal facilities to enter into Care Coordination Agreements. However, UDOH is making efforts to educate Tribes within Utah's borders on the CMS guidance and determine Tribal interest in implementing Care Coordination Agreements that would allow the State to move more claims to a higher match rate.

On November 15, 2017, UDOH engaged with the Tribes in a Tribal Consultation session regarding the CMS "Received Through" Policy. During this Tribal Consultation session, the Medicaid Director reviewed the CMS policy guidance, including discussion of Tribal use of Care Coordination Agreements and other aspects of the SHO letter. The Medicaid Director answered questions and agreed to schedule meetings with tribal leaders from each individual Tribe to better understand each Tribe's interest and intended approach to the CMS guidance.

As a follow-up to the Tribal Consultation session, the Department's Indian Health Liaison has engaged with many of the Tribes to answer additional questions. To determine whether any Tribes are interested in engaging in Care Coordination Agreements with providers, the Department plans to meet with leaders from each Tribe by the end of calendar year 2018.

To date, no Tribes have expressed to UDOH an intent to engage in Care Coordination Agreements with non-IHS/Tribal providers. Accordingly, at this time, UDOH does not estimate any cost saving related to the CMS guidance.

Department of Health Examination of its Current Claiming Practices – Status Update

A 2010 report: *American Indians and Alaska Natives: Medicaid State Data Collection for the Centers for Medicare & Medicaid Services Tribal Technical Advisory Group (TTAG*), identified that states could potentially increase the amount of 100 percent FMAP claiming by improving their data collection and claiming processes for claims associated with AI/AN members. The report described the following example where data collection and processing could be improved to support 100 percent FMAP reimbursement:

"The Department of Health Services had found that only about 39% of persons served at tribal clinics were identified as AIAN, though the Indian tribes of

[1] SHO.https://www.medicaid.gov/federal-policy-guidance/downloads/SHO022616.pdf

Wisconsin that operated the clinics estimated that 95% of their Medicaid enrolled clinic users were American Indians."[2]

As described in the Wisconsin example above, it is likely that the number of AI/AN members, whose status is verified in eRep, is less that the number of eligible AI/AN members who provide proof of AI/AN status to the IHS/Tribal facility prior to receiving services.

To better understand this issue, the UDOH is reviewing historical claims data to determine the percentage of persons definitively identified as AI/AN members through eRep, for whom UDOH claims 100 percent FMAP, compared to the number of individuals who receive services at IHS/Tribal facilities (that are only authorized to provide services to AI/AN individuals), and for whom Medicaid is not currently claiming 100 percent FMAP.

Although certain IHS/Tribal facilities are designated to provide services only to AI/AN individuals, there are some exceptions in federal law that require these facilities to provide services to non-AI/AN individuals in certain circumstances. For example, under the exceptions allowed in federal law, a non-AI/AN pregnant woman could receive services at an IHS/Tribal facility, if the father of the baby is AI/AN. In these exceptional situations, services are not reimbursable at 100 percent FMAP. Because of the possibility of these exceptions, and to avoid any potential Federal funding paybacks, the UDOH's current practice is to claim 100 percent FMAP for a claim received from an IHS/Tribal facility only when the claim is for a member whose status as AI/AN has been verified through the eRep system.

The UDOH is conducting preliminary analysis to determine if there are opportunities to improve its data collection and processing of claims for AI/AN individuals to support 100 percent FMAP reimbursement of more claims that it currently allows. The UDOH is currently working with Tribal entities to better understand the data collection and tracking mechanisms used to verify AI/AN status prior to the facility delivering services. Until further analysis is completed and the UDOH has done additional work with CMS to validate any claiming methodologies being considered, the UDOH is not able to provide an estimate of cost savings related to these claiming practices.

[2] https://crihb.org/wp-content/uploads/2018/01/0_Medicaid-AIAN-State-Survey-Final-12-8-10-1.pdf