



Prairie Band Potawatomi Nation
Government Center

January 22, 2020

Prairie Band Potawatomi Nation Testimony in Support of S.B 252 and Request for a Technical Amendment

The Prairie Band Potawatomi Nation (the "Nation") strongly supports S.B. 252 but requests a technical amendment be made before the bill is enacted. Medicaid expansion will provide critically important resources for the Nation's health programs and the beneficiaries it serves. Although the Nation receives some federal funding through the Indian Health Service to operate its health program, the IHS program is chronically underfunded, providing only about half of the funding needed to operate its programs. Medicaid expansion will help the Nation make up that funding gap and provide better care to its citizens. Due to a special provision in the Social Security Act, CMS will reimburse the State for 100 percent (not 90 percent) of the cost of services that are received through the Nation's facilities. As a result, Medicaid expansion will come at no cost to the State of Kansas for care received through the Nation's facility. The Nation strongly supports expansion and S.B. 252.

As discussed below, however, the Nation requests a technical amendment be made to the bill to make it consistent with federal Medicaid laws that are specific to American Indians and Alaska Native and Indian health care providers. Specifically, we request that an amendment be made to exempt individuals who are eligible to receive care from an Indian health care provider from the requirement that a referral and evaluation be made through Kansasworks as a prerequisite to coverage.

The Importance of Medicaid to the Indian Health System

The Medicaid program is a critical component in the United States' fulfillment of its trust responsibility to provide for the healthcare needs of American Indians and Alaska Natives. Medicaid funding is needed to help address the chronic underfunding of the Indian health system. For decades, the Indian health system has been chronically underfunded, leading to a large gap in the healthcare needs of Indian people. In 2014 for example, the per capita spending for IHS patient services was \$3,107 as compared to \$8,097 per person nationally.¹ Lack of funding has led to predictable results. American Indians and Alaska Natives continue to have some of the worst health disparities in the Nation.² As Congress recognized in 2010, "the unmet health needs of American

¹ The National Tribal Budget Formulation Workgroup's Recommendations on the Indian Health Service Fiscal Year 2017 Budget, May 2015.

² As detailed in the National Tribal Formulation Workgroup's Recommendations on the IHS Budget for 2017, "[a]ccording to IHS data, American Indians and Alaska Natives die at higher rates than other Americans from AI/AN people die at higher rates than other Americans from alcoholism (552% higher), diabetes (177% higher), unintentional injuries (138% higher), homicide (82% higher) and suicide (65% higher)."

Indian people are severe and the health status of the Indians is far below that of the general population of the United States.” 25 U.S.C. § 1601(5).³

The Medicaid program is a critical component in filling the disparity gap created by inadequate IHS funding. Without it, many IHS and tribal facilities would have to shutter needed programs and lay off critical staff. In FY 2016, IHS and tribally operated facilities received \$808 million in Medicaid funding for services provided to the Medicaid eligible individuals they serve.⁴ This represents 13 percent of the total funds received by IHS facilities in 2016.⁵ Medicaid today covers 34 percent of non-elderly American Indians and Alaska Natives and more than half of American Indian and Alaska Native children.⁶

Kansas Medicaid Expansion Will Be at No Cost to the State for the Indian Health System

When Congress authorized IHS and tribal facilities to bill Medicaid over 40 years ago, it wanted to ensure that United States would pay for that care, not the States. As a result, Congress amended Section 1905(b) of the Social Security Act to apply a 100 percent federal matching rate (FMAP) for services provided to American Indians and Alaska Natives that are received through an IHS or tribally-operated facility.⁷ This Indian 100 percent FMAP rule ensures that Medicaid services provided to American Indians and Alaska Natives through the IHS system will be paid for entirely by the United States, and not individual State Medicaid programs.

The Indian 100 percent FMAP rule would apply to services provided by IHS and tribal facilities to Indians in the new expansion population if the State of Kansas expanded Medicaid – not the 90 percent expansion FMAP rule. As a result, if S.B. 252 is enacted, there will be no additional costs to the State associated with Medicaid billing by the Indian health system in Kansas.

The Indian Health System Can Help the State Generate Additional Cost-Savings if the State Expands Medicaid

On February 26, 2016 CMS revised and expanded its interpretation of the Indian 100 percent FMAP rule to include services provided by outside providers referred by IHS or tribal facilities.⁸ In SHO Letter #16-002, CMS said that States can now receive 100 percent FMAP reimbursement for services by non-Indian providers if they enter into a "Care Coordination Agreement" with an IHS or tribal health care facility. As a result, if IHS and tribal health care facilities enter into these care coordination agreements with outside providers, then the State could generate additional FMAP reimbursement that could be used to offset any costs associated with Medicaid expansion. The Nation is willing and ready to work with the State to implement this new policy if S.B. 252 is enacted into law.

³ While the Indian health system has received funding increases in recent years, per capital healthcare spending levels still lag far behind the rest of the United States

⁴ <http://kff.org/report-section/medicaid-and-american-indians-and-alaska-natives-issue-brief-march-2016-update/>

⁵ Id.

⁶ Id.

⁷ 42 U.S.C. §1396d(b).

⁸ Center for Medicare and Medicaid Services, SHO #16-002, Feb. 26, 2016.

The Nation Requests a Technical Amendment from the Work Referral Requirement

The Nation strongly supports the goal of full employment for all of its citizens, but we are concerned that the work referral requirement in S.B. 252 would be a counterproductive barrier to access for Indians in the State. S.B. 252 would make a referral to and evaluation by Kansasworks a prerequisite to coverage for the new expansion population. Unlike other Medicaid enrollees, American Indians have a right to access care at IHS and tribal facilities at no cost to them. As a result, enrolling American Indians and Alaskan Natives in Medicaid at all is a real challenge, yet if they do not enroll, the Nation's health clinic cannot bill Medicaid for their services, and must forego important federal resources Congress intended them to receive. Because of this, any additional preconditions to enrollment can serve as a real barrier of access to Medicaid enrollment that is unique to tribal citizens. We are concerned that mandating participation in Kansasworks will pose such a barrier to access for our citizens, particularly since they look to receive workplace assistance from the Nation's programs, not the State's.

CMS can only approve a Section 1115 waiver if it is "likely to assist in promoting the objectives" of the Medicaid statute. One of the objectives of the Medicaid statute is found in Section 1911 of the Social Security Act, which authorized IHS and tribal facilities to bill the Medicaid program so as to obtain needed additional funding. IHS and tribal facilities cannot bill the Medicaid program if the beneficiaries we serve are no longer enrolled in Medicaid because they did not meet the State's work requirements for eligibility. We are concerned that many of the individuals we serve will drop off of Medicaid due to these work program referral and evaluation requirements.

We note that many States that have approved or pending work requirements waivers with CMS have exempted tribal members from having to meet such requirements as a condition of participation. We urge the Kansas legislature to do the same, and have provided proposed language in the form of a technical amendment that would achieve that goal.

Sincerely,



Joseph P. Rupnick
Tribal Council Chairman
Prairie Band Potawatomi Nation