1332 State Innovation Waiver Tribal Considerations

Overview

Oklahoma has 38 tribes and represents the largest Area within the federal Indian Health Service (IHS), with a user population of 348,380, or over 22% of total IHS users. Our state's Indian health system is robust – the Indian Health Service/Tribal/Urban (I/T/U) health systems within the Area manage eight hospitals, 50 health centers, one regional alcohol and substance abuse treatment center, and two urban Indian health centers. The large number of tribal health care facilities and programs is a strong reflection of the partnership and cooperation to fulfill the existing health care needs of the population.

Although health disparities continue, the American Indian and Alaska Native (AI/AN) population in Oklahoma has seen a number of improvements in health indicators. The rates of death due to stroke and kidney disease have seen statistically significant decreases over the past five years. Additionally, there have been decreases in the rates of death due to heart disease, cancer, diabetes mellitus, and influenza and pneumonia. Although these specific leading causes of death do not demonstrate statistically significant decreases, there is good potential for continued improvements. The Oklahoma Indian health system is also prioritizing the identification and treatment of Hepatitis C.

In 2013 there were nearly 140,000 uninsured Native Americans, representing nearly 22% of the state's uninsured population.[1] However, the Tribal Premium Sponsorship program, in which tribes sponsor (pay) the individual's net premium after federal subsidies is contributing to an increased number of citizens receiving health insurance coverage on the Marketplace. These programs are mostly in the starting phase as pilot programs, but it is anticipated that they will continue to grow and increase the number of insured AI/ANs. Additionally, Oklahoma submitted a Sponsor's Choice Waiver, which would provide Medicaid funding for tribal premium assistance. This waiver would support the goals of the 1332 Waiver by promoting individual insurance coverage, and thus it may be beneficial to have these two waivers approved together. The state may also want to look at making modifications to the Sponsor's Choice Waiver and/or the 1332 Waiver to increase alignment of efforts. Such alignment could include having the same income ceiling for subsidies and eligibility for coverage through both the 1332 Waiver (currently 300% federal poverty level) and Sponsor's Choice (currently 200% federal poverty level).

Indian Health Systems and the Affordable Care Act

The Affordable Care Act (ACA) permanently reauthorizes the Indian Health Care Improvement Act (IHCIA) within Section 10221, and therefore changes made to or repeal of the ACA can impact the IHCIA. The IHCIA serves as the backbone legislation for I/T/U health systems and provides the foundational authority for the Indian Health Service to be reimbursed by Medicare, Medicaid, and third party insurers; to make grants to Indian Tribes and Tribal organizations; and to run programs designed to address specific, critical health concerns for Native Americans such as substance abuse, diabetes, and suicide. The preservation of the IHCIA and its permanency are essential for the continued provision of health care to the AI/AN population.

Furthermore, there are a number of provisions within the ACA separate from the IHCIA that have significant implications for the Indian health system:

[1] Used 2013 US Census data to obtain Native American population by market. This number includes all individuals that identify themselves as having Native American heritage.

- ✓ Special Enrollment Periods (Section 1311) – Provides for special monthly enrollment periods for Indians.
- ✓ Cost Sharing Reductions (Section 1402, Section 2901) – Eliminates all cost-sharing for Indians under 300% of the federal poverty level (FPL) enrolled in any individual market plan offered through a federal or state Exchange. Establishes that Indian beneficiaries enrolled in a qualified health plan are not charged cost sharing for any item or service provided directly by IHS, an Indian Tribe, Tribal Organization, or Urban Indian Organization or through referral under contract health services.
- ✓ Exemptions (Section 1501) – Exempts members of Indian tribes from the shared responsibility penalty for failure to comply with the requirement to maintain minimum essential coverage.
- ✓ Payer of Last Resort (Section 2901) – Establishes that I/T/U providers are the payers of last resort for services provided to Indians by I/T/U for services provided through such programs.
- ✓ Tax Exclusions for Health Benefits (Section 9021) – Excludes the values of health benefits provided or purchased by the Indian Health Service, tribes, or tribal organizations from gross income.

1332 Waiver Considerations

In considerations of these provisions, the following recommendations have been developed related to certain strategies proposed in this paper:

- ✓ Quality Measures Related to Chronic Disease

  The I/T/U system currently reports on a number of quality measures, one example being those required under the Government Performance and Results Act (GPRA). Quality measures for providers overall should align with these measures to eliminate duplication and limit the administrative burden on I/T/U providers. Additionally, baseline measures for these providers need to take into account that populations served by the I/T/U system are not currently included in statewide baseline data and health outcomes and status are statistically different for this population.

- ✓ Tighter Restrictions on Premium Payment Grace Periods and Special Enrollment Requests

  Changes to special enrollment requests need to take into account that AI/ANs currently can enroll anytime. Exemption from tighter restrictions on special enrollment needs to be considered for this population. If this population were restricted to the open enrollment period, Tribal Sponsorship would be significantly impacted.

  Requirements related to premium payment for past months of non-payment when an individual re-enrolls in a plan also need to exempt the Tribal Sponsorship program to ensure tribes are not restricted in helping individuals access coverage through this program. Insurer processes regarding invoicing and covered lives rosters should be evaluated alongside these changes to ensure the timing of payments and continuation of coverage are reasonable.

- ✓ APTC and CSR Eligibility and Distribution

  If eligibility for advanced premium tax credits (APTCs) is shifted to 0-300% of the FPL, the net cost of premiums that the Tribal Sponsorship program is providing would be impacted. This shift could potentially result in cost savings for the program, as many sponsored individuals have incomes below 100% of the FPL. To the extent that AI/AN continue to be exempted from all cost sharing,

changes to the eligibility and distribution of these cost sharing reduction (CSR) payments would have no anticipated effect.

✓ Consumer Health Accounts

The administration of consumer health accounts need to consider the current Tribal Sponsorship program operations and ensure that the program can continue to support access to coverage for the AI/AN population. Tribal Sponsorship programs currently have assurance that the federal portion of the premium payment has been made on behalf of the individual and that the tribal contribution completes the total payment. This ensures the individual indeed receives health insurance coverage. The consumer health account should also provide direct payments to insurers, continuing the assurance to Tribal Sponsorship programs that insurance coverage is paid in full.

✓ High-Risk Pools

The need for AI/ANs to obtain coverage through a high-risk pool should be a last resort after all other potential eligibility avenues have been exhausted. If an AI/AN receives coverage through Medicaid, their continuation with the Medicaid program (or Medicaid-funded participation in tribal premium assistance) should be permitted.

✓ State-Controlled Plan Regulation

Any changes implemented by the Oklahoma Insurance Department with regard to the state assuming responsibility for review and regulatory oversight of payers need to include contractual provisions currently identified for the Sponsor's Choice program. These provisions include the requirement that insurers must contract with I/T/Us to ensure that service provision is not interrupted, as well as utilizing the encounter rate as the payment rate to I/T/U providers.