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F I S C A L I M P A C T R E P O R T

SPONSOR HHGIC **ORIGINAL DATE** 02/10/13 **LAST UPDATED** 03/08/13 **HB** 376/HHGICS

SHORT TITLE Native Americans in Medicaid Managed Care **SB**

ANALYST Geisler

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
IT Changes		$108.0		$108.0	Nonrecurring	General Fund and Federal Matching Funds
Medicaid program Costs		Potentially Significant, See Fiscal Implications	Potentially Significant, See Fiscal Implications		Recurring	General Fund and Federal Matching Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Human Services Department (HSD)
Indian Affairs Department (IAD)
Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

The House Health, Government and Indian Affairs Committee substitute for House Bill 376 amends the Public Assistance Act to remove Native Americans from mandatory enrollment in Medicaid managed care. Specifically, any recipient who self-identifies as a Native American shall not be required to enroll in a Medicaid managed care program. The Department shall afford any recipient who self-identifies as a Native American the option of enrolling in a medicaid managed care or medical fee-for-service program upon determination of eligibility Additionally, Native Americans have a monthly opportunity to enroll or disenroll in either a Medicaid managed care program or a Medicaid fee-for-service program.

FISCAL IMPLICATIONS

Determining the fiscal impact of retaining the current fee-for-service system for Native Americans versus moving Native Americans into managed care is difficult at this time, but is likely to be significant given the size of the Medicaid program. Native American enrollment exceeds 90 thousand with the majority of clients in fee-for-service. Additional Native Americans will be enrolling in Medicaid starting in 2014 with the expansion of coverage for low-income adults earning under 138 percent of poverty and the fate of the Centennial Care waiver request is still to be determined.

Advocates for HB376, including the Center for Law and Poverty, note that under the current system the state saves money on Native Americans not enrolled in managed care who receive services at Indian Health Service (IHS) or Tribal organizations, because these services are reimbursed at 100 percent by the federal government. By this logic, moving Native Americans into managed care and paying a monthly capitated rate of several hundred dollars to a managed care company may cost the state due to a lower federal match, particularly for children. At the same time, managed care companies have struggled to provide an adequate network of providers in rural New Mexico, so there is a risk that capitated payments will be made for clients who will not receive the same level of service that is available in urban areas. Advocates argue that moving Native Americans to managed care is likely to have a negative impact on the finances at IHS and Tribal health facilities.

HSD views fee-for-service as a payment system without the preventative health care aspects of managed care and note that many Native Americans receive fee-for-service at non-IHS or Tribal facilities in which the state does not receive 100 percent federal reimbursement. The Human Services Department (HSD) notes that excluding a significant portion of the eligible population from mandatory enrollment in managed care as allowed in the bill would result in higher costs to the program. Among the goals of the Department's Centennial Care initiative is to ensure the sustainability of the Medicaid program given regular program growth as well as the expansion of Medicaid enrollment for low-income adults starting in 2014.

The HSD notes the Medicaid budget has been developed, based on approval of a federal Section 1115 demonstration waiver, to include a budget neutrality agreement with virtually all services provided via managed care. Allowing Native Americans to "opt out" would require the development of new budget neutrality calculations and overall Medicaid budget redevelopment to account for management of a large fee-for-service population.

In addition, the HSD asserts no managed care program can be sustained when members are able to move in and out of the program on a monthly basis. Managed care rates are based on an expected number of member months of enrollees over a 12-month period. Allowing more than 100,000 Native American Medicaid recipients to switch between managed care and fee-for-service on a monthly basis will make the development of actuarially sound rates extremely difficult and would most likely result in increased rates to the plans, which will in turn increase the cost of the program.

This bill would have an impact to the Your Eligibility System – New Mexico (YES-NM) and the Automated System Program and Eligibility (ASPEN) to provide for Native Americans to revise their choice of managed care organizations (MCO) versus fee-for-service on a monthly basis. The cost involved in this change would be approximately $108 thousand.

SIGNIFICANT ISSUES

Federal Center for Medicare & Medicaid Services (CMS) Letter Dated 3-5-13

In the letter from CMS to HSD (see attached) on March 5th, CMS articulated the waiver will not impose any new requirement for Native Americans to enroll in managed care. Native American Medicaid beneficiaries will have the opportunity to voluntarily opt-in to managed care. The terms and conditions will promote and encourage voluntary enrollment, but there will be no expansion of mandatory managed care enrollment for Native Americans. Native American beneficiaries who meet nursing facility level of care or who are dually eligible will continue to be required to enroll in managed care as is the case today under CoLTS.

As noted above under fiscal impact, the state expects that moving away from mandatory enrollment for Native Americans in managed care will increase program costs.

Native American Concerns on Centennial Care

Advocates for Native Americans note that the bill is aimed at maintaining fee-for-service Medicaid for Native Americans and supports the continuation of the managed care "opt out" option currently in place. The Centers for Medicare and Medicaid Services (CMS) held a tribal consultation with tribal representatives on November 27, 2012 regarding the Centennial Care proposed 1115 Medicaid waiver. Tribal leaders observed that numerous acts of Congress have established the federal responsibility for health care for members of tribes not only in principle but also in practice and questioned state authority to mandate fundamental changes in the delivery of health care to Native Americans. Tribal leaders called the waiver an infringement of tribal sovereignty and noted that the State had not produced data to support its claim of improved outcomes in managed care.

Many tribal leaders explained they live in very rural and remote communities. They expressed the concern that the Primary Care Physicians (PCPs) will reside in urban communities which may be as far as 200 miles away. Indian people are comfortable with IHS, tribal leaders noted, and they are not inclined to travel to long distances to obtain their health care. Tribal leaders described Native people in Salud! managed care program who were assigned PCPs in distant cities. They said these health care providers never physically see their patients, who as a matter of course seek their health care from the local service unit. They complained of the delays in the delivery of care when the service unit has to obtain permission from patients' PCPs. Tribal leaders noted that when Native people received an opt out option for Medicaid managed care, the system worked relatively well, because community members could access their health care from MCOs if it personally worked for them.

The HSD Concerns on Impact HB 376 on Centennial Care

The HSD/MAD is in final negotiations with the Centers for Medicare and Medicaid Services to consolidate its various federal waiver programs under a global Section 1115 demonstration waiver that will create the HSD's next-generation managed care program, Centennial Care. This comprehensive care delivery system is designed to serve all Medicaid enrollees. Beginning January 1, 2014, the HSD/MAD will no longer have a fee-for-service "program", and all recipients will choose among the offered managed care plans.

Essentially, fee-for-service is not a program; it is a claims payment process. It is not designed to manage and coordinate care so that enrollees get the right services at the right place and at the right time. It cannot "manage" costs except by cutting provider rates, benefits or eligibility. It cannot tell us if health outcomes are improving or if care quality is high. The HSD cannot improve the health of the state's Medicaid enrollees or effectively manage costs in a fee-for-service program. That is why Centennial Care was designed to serve all of New Mexico's Medicaid recipients

The central component of Centennial Care is a comprehensive care coordination model that integrates and addresses each member's physical health, behavioral health, social and long-term care needs across the full continuum of services and settings. This kind of comprehensive care coordination program is not available in Medicaid's fee-for-service model. Additionally, the Centennial Care program expands access to the home- and community-based services (HCBS) benefit to all otherwise eligible Medicaid enrollees who meet a nursing facility level of care. In the current Medicaid program, only persons occupying a waiver slot get access to the full HCBS package. Access to HCBS is restricted to Centennial Care recipients and not available in the fee-for-service program.

Also, the Centennial Care MCOs will offer value-added services, such as traditional Native American healing services, that are not available to fee-for-service recipients. Other innovative programs that are not available in a fee-for-service model, such as patient-centered medical homes and health homes designed for population-specific needs, will also be available to eligible Centennial Care enrollees. In Centennial Care, Indian Health Services (IHS) and Tribal 638 facilities will have opportunities to increase their revenues by contracting with Centennial Care MCOs to serve as comprehensive care coordinators, patient-centered medical homes, and health homes. This is not an option in the fee-for-service program.

To have persons moving in and out of Centennial Care on a monthly basis would likely cause unnecessary confusion and interruptions in care continuity that, in spite of everyone's best efforts, could negatively affect the health of Native American Medicaid enrollees.

<u>"Self-identification" as a Native American and Impact on Medicaid Program</u>

The HSD and the AGO note that the bill allows persons to "self-identify" as Native Americans. The HSD is concerned that allowing individuals to self-indentify as a Native American without verifying that the person is actually an enrolled member of a federally recognized pueblo or tribe would cause considerable problems in administering the Medicaid program. There could be numerous people who are not Native Americans who would be able to switch between managed care and fee-for -service models disrupting the efficient enrollment and management of Medicaid in New Mexico. The Center for Law and Poverty notes that HB376 proposes no changes to the way the current Medicaid regulations are written and that it has not been a problem in the past.

PERFORMANCE IMPLICATIONS

The HSD notes that the goals of Centennial Care align with the Department's 2014 strategic plan goals to improve health care quality, control costs, and implement innovative models of cost-effective service delivery and payment reform in the Medicaid program. Leaving a significant portion of Medicaid recipients out of Centennial Care, or having them move in and out of the program, will negatively impact the HSD's ability to achieve these important goals, as well as

deprive those recipients the benefits of a comprehensive health delivery system focused on improved access to care, improved outcomes, and improved quality of care.

Enrollment in Centennial Care will increase provider choice for all Medicaid recipients. Specifically, in Centennial Care Native Americans may access care at the IHS, a Tribal 638 provider, an urban Indian program (together known as I/T/Us), as well as at a patient-centered medical home, a health home, or any other contracted provider in the member's MCO's network. In Centennial Care, Native Americans will be able to access care at any I/T/U provider they choose, whether the provider has a contract with the member's MCO or not, and the Native American member can choose any I/T/U provider, contracted or not, as their PCP.

OTHER SUBSTANTIVE ISSUES

The HSD notes that if the bill is enacted prior to January 1, 2014, it would affect the HSD/MAD's Coordinated Long-Term Program (CoLTS) waiver program, which requires mandatory enrollment in managed care for all eligible recipients. Allowing Native Americans enrolled in CoLTS to have a monthly option of "opting out" of the managed care program would require additional and substantial staff resources to oversee a separate fee-for-service program for this population as well as require extensive programming changes to the Medicaid management information system.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Advocates for Native Americans note that if the federal government accepts New Mexico's proposed Section 1115 waiver as is, then Native American Medicaid recipients will not have the option of opting in or opting out of Centennial Care. This bill is aimed at providing the opt-out option that many tribal communities feel is crucially needed.

GG/svb:blm

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850

March 5, 2013

Ms. Julie Weinberg
Director
Medical Assistance Division
New Mexico Human Services Department
P.O. Box 2348
Santa Fe, NM 87504

Dear Julie:

I am writing to memorialize the work we have accomplished together to date on New Mexico's request for a section 1115 demonstration waiver to implement Centennial Care. We have made significant progress in developing terms for a demonstration that will enable the state to assure Medicaid beneficiaries access to a fully integrated, coordinated service delivery system. We particularly appreciate the focus on care coordination as a means to assuring the delivery of the right care at the right time and in the right settings. We believe the combination of an integrated service delivery system combined with robust care coordination requirements has the potential to benefit all New Mexicans in the Medicaid program. We also appreciate the state's participation in our second tribal consultation with New Mexico tribes on January 23, 2013, and the state's willingness to offer additional managed care protections for Native Americans. We are eager to continue working together to resolve all outstanding issues.

Moving ahead, we look forward to developing terms and conditions of the demonstration waiver to include:

- Support for a comprehensive managed care delivery system under which contracted health plans will offer the full array of current Medicaid services and for a new, integrated Community Long Term Benefit that will enable those individuals who meet nursing facility level of care access to a wide range of services designed to keep them in their homes and communities;

- Required enrollment of Native American beneficiaries who meet nursing facility level of care or who are dually eligible in managed care, as is the case today under CoLTS. All other Native American Medicaid beneficiaries will have the opportunity to voluntarily opt-in to managed care. The terms and conditions will promote and encourage voluntary enrollment but there will be no expansion of mandatory managed care enrollment for Native Americans.

We will continue to work with you on payment issues related to the state's Sole Community Provider Program. As we have also discussed, we will postpone our decision on the state's request for a waiver of retroactive eligibility until the state can provide more data on the implementation of its eligibility system improvements that are expected in 2014.

We recognize that you have already begun work on program implementation and we appreciate that the State has planned a long lead time to ensure successful implementation.

We look forward to working with you further on moving the waiver towards final completion. Please feel free to call me if you have any concerns or questions as we continue our work together.

Sincerely,

Cindy Mann
Director