

100% FMAP FOR URBAN AMERICAN INDIANS AND ALASKA NATIVES

Clarifying Facts and Challenging Misconceptions

March 27, 2017

In our work with governmental, Tribal, and community health partners, we recognize that there is a lot of confusion around Urban Indian Health Programs' (UIHP) desire to attain Medicaid's 100% Federal Medical Assistance Percentage (FMAP) eligibility. Here are some facts and information that challenges some misconceptions about 100% FMAP eligibility for UIHPs.

Facts

- 100% FMAP payment eligibility can only be accessed by Indian Health Service (IHS) Direct and Tribal 638 Facilities because both are mentioned in the Social Security Act (SSA) section 1905(b). IHS Direct facilities were directly written into the section and Tribal 638s were added when the Indian Self-Determination and Education Assistance Act (ISDEAA) was passed.
- UIHPs are the only part of the IHS's IHS Direct, Tribal 638, and UIHP (I/T/U) system of care that are not 100% FMAP payment eligible despite being Indian Health Providers stipulated in Title V in the Indian Health Care Improvement Act (IHCIA), now Subchapter IV of the IHCIA as amended by the Affordable Care Act (ACA) in 2010.
- During the Obama Administration, there was a request to the Center for Medicare and Medicaid Services (CMS) to offer an administrative fix by reinterpreting SSA 1905(b) to include UIHPs.
- CMS stated that they would not attempt an administrative fix because the Social Security Act is statute, which would require a legislative fix. CMS cannot change laws, rather their role is to fulfill federal law. This means that for a full fix, SSA 1905(b) would have to be amended by Congress and signed by the President into law.
- [Care Coordination Agreements](#) with tribes can be executed between an IHS Direct Facility or a Tribal 638 Health Authority and contractors that they work with to become eligible for the 100% FMAP payment. The referring I/T facility can even negotiate a percentage, if not all, of an IHS encounter rate under this agreement because the client would have to be enrolled first with the I/T facility, and then referred to the UIHP for services. UIHPs would also not have full control over the client's medical records as the referring I/T facility is obligated to maintain control over the file throughout the referral process.
- A state can enter into a demonstration project with CMS to test alternative health care delivery models and payment mechanisms. There is a demonstration project underway in a UIHP state that is testing one model now. After the demonstration, if CMS analysis reveals the test to be successful, the program would be subject to the tribal consult and urban confer process before it is an approved mechanism.

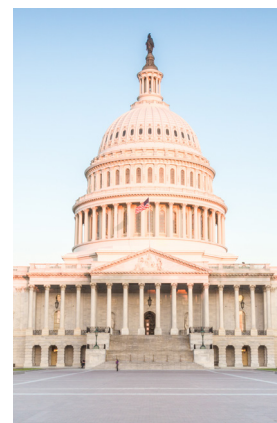
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Challenging Misconceptions

- UIHPs gaining 100% FMAP eligibility does not touch tribal monies. UIHPs do not gain access to Purchased and Referred Care monies, and do not gain access to the IHS encounter rate. These are legacies of tribal autonomy and sovereignty. The UIHPs know full well that we are not tribes and in no way want to threaten tribal autonomy and sovereignty. UIHPs are only asking for 100% FMAP payment eligibility for our IHS eligible clients.
- Neither a governor, nor an IHS regional director has the authority to deem a UIHP 100% FMAP eligible. This is because CMS must approve of the payment and their role is to carry out federal rules as prescribed by federal law. SSA 1905(b) would have to be changed for CMS to approve 100% FMAP spending to the UIHPs.
- The IHS budget included in the President's budget is just a policy recommendation. Once the President's budget is released then the House formulates, proposes, and has to pass the relevant appropriations bill. Next, the Senate takes the Budget Request and formulates, proposes, and has to pass their own appropriations bill, and then the President has to sign that appropriations bill into law. 100% FMAP, because it is ultimately an amendment to SSA 1905(b), has to be introduced as a stand-alone bill, or in a package of bills, or as a piece of an established piece of legislation that is ultimately passed by both houses of Congress and signed by the President to become law.

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