Exchange Final Rule: Indian Provisions

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CENTERS for MEDICARE & MEDICAID SERVICES

Center for Consumer Information and Insurance Oversight

Health Insurance Exchange System-Wide Meeting

May 21-23, 2012

ACA Provisions Relevant to American Indians/Alaska Natives

- The Affordable Care Act includes specific provisions relevant to American Indians and Alaska Natives (AI/ANs) purchasing coverage in Exchanges, including the following:
  - AI/ANs with household incomes below 300 percent of the federal poverty level who are enrolled in a Qualified Health Plan (QHP) offered through the individual market Exchange will not have to pay any cost-sharing;
  - If an AI/AN is enrolled in a QHP and receives services directly from IHS, Indian tribe, tribal organization, urban Indian organization or through the Contract Health Service program, the individual will not have to pay any cost sharing for those services;
  - Exchanges are to provide special monthly enrollment periods for AI/ANs; and
  - Members of Indian tribes are exempt from the individual responsibility payment for not complying with the requirement to maintain essential insurance coverage.

Indian Provisions of the Exchange Final Rule

- Tribal Consultation
- Tribes Paying Premiums
- Essential Community Providers
- Third Party Payer
- Navigators
- Establishment of Network Adequacy for Certification of Qualified Health Plans
- Definition of Indian
- Verification of Indian Status

Tribal Consultation

- The Exchange final rule requires States to regularly consult with Federally recognized Tribes that are located within the geographic region of the Exchange on policies that have tribal implications.
- This requirement does not preclude States from seeking input from all tribal organizations and urban Indian organizations.
- HHS encourages States to develop a Tribal Consultation Policy that is approved by the State, the Exchange, and Tribe(s).
- HHS recognizes the potential that FFEs will have to improve access to health coverage for American Indians and Alaska Natives in States that do not establish State-based Exchanges. HHS intends to consult with Tribes to implement FFE policies that impact American Indians and Alaska Natives.

Tribes Paying Premiums

- Exchanges may permit Indian tribes, tribal organizations, and urban Indian organizations to pay the QHP premiums for qualified individuals, subject to terms and conditions set by the Exchange.
- We recognize that some Exchanges may wish to work with tribal governments to facilitate payment on behalf of enrollees, including aggregated payment. We encourage Exchanges to include this option as part of its consultation with tribal governments.

Essential Community Providers

- In the final rule, the definition of an essential community provider is taken from section 1311 of the Affordable Care Act.
- The definition identifies essential community providers as providers that serve predominantly low-income, medically underserved individuals and cites providers defined in section 340B of the Public Health Service Act.[1]
  - Includes urban Indian organizations and tribal organizations' outpatient clinics.
- Exchanges may identify additional providers as essential community providers based upon local needs.

1. 42 U.S.C. § 1396r-8 (Section 1927 of the Social Security Act)

Third Party Payer

- The Indian Health Care Improvement Act (IHCIA) provides that all Indian health providers have the right to recover from any third party payers, including insurance companies:
  - Up to the reasonable charges billed for providing health services; or
  - If higher, the highest amount the insurer would pay to other providers to the extent that the patient or another provider would be eligible for such recoveries.
- In the final rule preamble, we note that section 206 of IHCIA applies to all third party payers, including QHPs.

Indian Addendum

- We received comments on the proposed rule that HHS develop an Indian Addendum for QHPs to use when contracting with Indian providers, and that we should mandate its use.
- We recognize that furnishing QHP issuers with a standard Indian Addendum to a provider contract may make it easier for QHP issuers to contract with Indian providers.
- We plan to develop a template for contracting between QHP issuers and tribal health care providers.
- While we do not require that QHP issuers use of the template, we believe that QHP issuers will find it in their interest to adopt such a template when contracting with Indian providers.
  - Exchanges may also elect to require QHP issuers to use the Indian Addendum when QHP issuers contract with Indian providers.

Navigators

- The Exchange final rule provides discretion to Exchanges in the awarding of Navigator grants; there is no requirement to award a Navigator grant to an Indian tribe or organization.
- Indian tribes, tribal organizations, and urban Indian organizations may apply for grants to serve as Navigators provided that they meet the eligibility requirements.
- During an Exchange's consultation with tribal governments, tribal governments should have the opportunity to provide early input on the development of the Navigator program.

Establishment of Network Adequacy for Certification of QHPs

- The final rule balances the need to provide Exchanges with flexibility to tailor network adequacy standards to local conditions, while also recognizing the need for a uniform level of accessibility.
- Setting a threshold network adequacy standard will help ensure access in Indian Country, particularly in hard to reach and remote areas.
- In the final rule, we require QHP issuers to maintain networks that include sufficient numbers and types of providers to ensure access to all services. We urge States to consider local demographics, among other elements, when developing network adequacy standards and note that nothing in the final rule would preclude an Exchange from identifying specific provider types that are particularly essential in a State.
- In addition, the Exchange may establish additional data elements that QHP issuers must include, such as identifying Indian Health Service/Tribal/Urban (I/T/U) providers.

Definition of Indian

- HHS received comments regarding the three definitions of Indian in the Affordable Care Act as they pertain to special enrollment periods, cost-sharing reductions, and individual responsibility exemptions.
- HHS does not have administrative flexibility to align these definitions with IHS or Medicaid definitions.
- Any modification would require legislative action.
- HHS is providing technical assistance to Congress regarding alignment of these definitions.

Verification of Indian Status

- If an applicant attests that he or she is an Indian, the Exchange must verify Indian status.
- The Exchange must rely on any electronic data sources that are available to the Exchange and have been approved by HHS for this purpose.
- If approved data sources are unavailable, an individual is not represented in the source, or the source is not reasonably compatible with an applicant's attestation, the Exchange must follow inconsistency procedures.