CMS
CENTERS FOR MEDICARE & MEDICAID SERVICES

All Tribes Consultation Webinar
August 8, 2024

All Tribes Consultation Webinar Agenda

Agenda

- Proposed Medicaid Clinic Services Four Walls Exceptions
  - Background on Medicaid Clinic Services Benefit & Four Walls Requirement
  - Overview of Medicaid Clinic Services Four Walls Exceptions Proposed Rule
  - Q and A

All Tribes Consultation Webinar (continued)

Note: The policies presented in this deck are not final and are subject to change in the final rule. All comments must be received using the instructions in the published Federal Register document 89 FR 59186.

Background

- The Medicaid clinic services benefit is **an optional benefit** category.
- Clinic services are defined at **section 1905(a)(9) of the Social Security Act (the Act)** and implementing regulations at **42 CFR § 440.90**.
- The clinic services benefit is **a separate benefit** category from the **federally qualified health center (FQHC) services, rural health clinic (RHC) services, and outpatient hospital services benefit categories**.
- Under the current regulation, clinic services:
  - Are **preventive, diagnostic, therapeutic, rehabilitative, or palliative services** furnished by a **facility that is not part of a hospital** but is **organized and operated** to provide medical care to **outpatients**;
  - Must be furnished **by or under the direction of a physician**; and
  - Must be furnished **within the four walls of the clinic** except for services furnished to an **individual who is unhoused**.

Background (continued)

- Congress **amended section 1905(a)(9) of the Act** in 1987 to **create an exception** to the clinic services four walls requirement **for individuals who are unhoused**.
- In 1991 rulemaking, CMS explained that **clinic services have always been limited to the four walls** of the clinic (or satellite location) and that:
  - The exception added by Congress for individuals who are unhoused **represents an exception to the four walls general coverage requirement**; and
  - CMS **interpreted** this legislative change as **ratifying the four walls requirement by establishing an explicit exception** for individuals who are unhoused.

Background (continued)

- CMS recognized in 2017 that **Indian Health Service (IHS) and Tribal clinics were providing services outside of the four walls**, including to individuals to whom the existing statutory and regulatory exception does not apply, and that states were paying for these services at the clinic services rate.
- In a 2017 frequently asked questions (FAQ) document, **CMS announced a four-year grace period** to January 30, 2021, to allow states and IHS/Tribal clinics to come into compliance with the four walls requirement.
- CMS issued CMCS Informational Bulletins (CIBs) on January 15, 2021, October 4, 2021, and September 8, 2023, to **announce further extensions of the grace period**.
- The grace period is currently scheduled to **end on February 11, 2025**.

Background (continued)

- CMS has heard from **Tribes, the CMS Tribal Technical Advisory Group (TTAG), and the HHS Secretary's Tribal Advisory Committee (STAC)** that the four walls requirement will **create barriers in access** for beneficiaries who receive care from IHS/Tribal clinics after the grace period ends.
- Tribes, the TTAG, and the STAC have asked CMS to **eliminate the four walls requirement for IHS/Tribal clinics**.
- CMS has also received requests from some states to **allow exceptions to the four walls requirement for clinics that serve vulnerable populations**, such as behavioral health clinics.

Proposed Clinic Services Four Walls Exceptions

- CMS has **included a proposal to add exceptions to the Medicaid clinic services four walls requirement** as part of the calendar year (CY) 2025 Hospital Outpatient Prospective Payment System (OPPS) and Ambulatory Surgical Center (ASC) Payment System proposed rule (CMS-1809-P).
- CMS is proposing a mandatory exception for **IHS/Tribal clinics**, and optional exceptions for **behavioral health clinics** and **clinics located in rural areas**.
- Comments are **due by September 9, 2024**.
- CMS is proposing these exceptions:
  - To **address the concerns we have heard** from Tribes, the TTAG, the STAC, states, and other interested parties;
  - To **fulfill Executive Orders 13175, 14009, and 14070**; and
  - To be consistent with our **strategies, goals, and objectives to advance health equity and improve health care access** for Tribal, behavioral health, and rural populations.

Proposed Exception Criteria

- CMS continues to believe that the statute **does not authorize broad exceptions to the four walls requirement that have no relationship to the current exception** or **a complete elimination** of the four walls requirement.
- CMS is **reinterpreting section 1905(a)(9) of the Act as permitting additional exceptions** to the four walls requirement for populations served by clinics **if those populations have similar health care access issues as the unhoused population**.
- The exceptions outlined in the proposed rule **follow four criteria that mirror the needs and barriers to access** experienced by **individuals who are unhoused**:
  - The population **experiences high rates of behavioral health diagnoses or difficulty accessing behavioral health services**;
  - The population **experiences issues accessing services due to lack of transportation**;

Proposed Exception Criteria (continued)

  - The population **experiences a historical mistrust of the health care system**; and
  - The population **experiences high rates of poor health outcomes and mortality**.

- CMS **expects the proposed exceptions to the clinic services four walls requirement to improve access to care** for the populations targeted by the exceptions.
- If finalized, the exceptions would **authorize states to pay for services** furnished under the exceptions at **facility-based clinic services payment rates**.

Proposed IHS/Tribal Clinic Exception

- CMS **proposes to add an exception** to the four walls requirement for **IHS/Tribal clinics** at a new 42 CFR 440.90(c).
- This exception would:
  - Be **mandatory for all states** that cover the clinic services benefit.
  - Only apply to clinics that are **owned and operated by IHS, clinics that are owned by IHS and Tribally-operated as authorized by the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA), or by Tribes and Tribal organizations** as authorized by the ISDEAA; and
  - Apply to **any Medicaid beneficiary who receives services from an IHS/Tribal clinic**.
- CMS is **not proposing to include facilities operated by urban Indian organizations (UIOs)** in this proposed exception.

Proposed IHS/Tribal Clinic Exception (continued)

- CMS is proposing this exception **based on advice and input received through Tribal consultation** and **evidence that the population served by IHS/Tribal clinics tends to meet the four criteria** more than other populations.
- CMS is proposing that the IHS/Tribal clinics would be **a proxy for the patient population they serve** because:
  - The entire patient population **is likely to meet some or all of the four criteria** described in the proposed rule; and
  - They serve **a clearly identifiable group of Medicaid beneficiaries** under IHS statutes and regulations.

Proposed Behavioral Health Clinic Exception

- CMS **proposes to add an exception** to the four walls requirement for **behavioral health clinics** at a new 42 CFR 440.90(d).
- This exception would:
  - Be **optional for states** that cover the clinic services benefit;
  - Apply to clinics that are **primarily organized for the care and treatment of outpatients with behavioral health disorders** (including mental health and substance use disorders);
  - Apply to **any services furnished outside of the four walls by a behavioral health clinic** (including non-behavioral health services);
  - Include behavioral health clinic types that are **recognized nationally, such as Community Mental Health Centers, and other behavioral health clinics organized in a state; and**
  - If this proposal is finalized as described, states that choose to adopt this exception would **describe the types of behavioral health clinics such exception applies to in their Medicaid state plan**.

Proposed Behavioral Health Clinic Exception (continued)

- CMS is proposing this exception **based on evidence** that indicates that an exception to the clinic services four walls requirement could be warranted, based on state-specific circumstances, for behavioral health clinics, as these clinics might primarily serve a patient population that **may be more likely than other groups to meet more of the four criteria**.
- CMS is proposing that the behavioral health clinics would be **a proxy for the patient population they serve** because:
  - We believe it would be **too operationally burdensome** to require that, to qualify for the exception, clinic services be provided specifically to individuals with a behavioral health disorder; and
  - It is our understanding that behavioral health clinics **generally serve a patient population that consists primarily of individuals with behavioral health disorders**.

Proposed Clinics Located in Rural Areas Exception

- CMS **proposes to add an exception** to the four walls requirement for **clinics located in rural areas** at a new 42 CFR 440.90(e).
- This exception would:
  - Be **optional for states** that cover the clinic services benefit;
  - Apply to **clinics located in rural areas**; and
  - **Not apply to clinics that are RHCs.**

Proposed Clinics Located in Rural Areas Exception (continued)

- CMS is proposing this exception **based on evidence** that indicates that an exception to the clinic services four walls requirement could be warranted, based on state-specific circumstances, for clinics located in rural areas, as these clinics might primarily serve a patient population that **may be more likely than other groups to meet more of the four criteria**.
- CMS is proposing that clinics located in rural areas would be **a proxy for the patient population they serve** because:
  - CMS believes it would be **too operationally burdensome** to require that, to qualify for the exception, clinic services be provided specifically to individuals who reside in rural areas; and
  - It is our understanding that clinics located in rural areas **generally serve a patient population that consists primarily of individuals who reside in rural areas**.

Proposed Clinics Located in Rural Areas Exception (continued)

- There are **many federal and state definitions of rural** for various programs, and **no single definition precisely identifies all rural areas**.
- CMS **did not include a definition of rural in the proposed rule** but is considering defining the term in the final rule.
- CMS is **considering several approaches to defining rural** for the final rule:
  - **Census** definition;
  - **Office of Management and Budget** definition;
  - The **Federal Office of Rural Health Policy** definition;
  - A definition of rural that is **adopted and used by a Federal governmental agency for programmatic purposes**;
  - A definition of rural that is **adopted and used by a State governmental agency with a role in setting rural health policy**; or
  - **Not adopting any definition of rural**.

Additional Considerations in the Proposed Rule

- CMS is also proposing to:
  - **Codify in regulation text** our longstanding interpretation that **the existing § 440.90(a) and (b) are mandatory components of the clinic services benefit** for states that cover the benefit; and
  - **Delete the word "eligible" from existing regulation text** at 42 CFR 440.90(b) because the word is unnecessary as Medicaid-covered services may only be provided to Medicaid-eligible individuals.
- CMS is proposing to make the **IHS/Tribal clinic exception mandatory** and the **exceptions for behavioral health clinics located in rural areas optional** because:
  - The population served by IHS/Tribal clinics **more consistently meets the four criteria**, both within and across states, **than the populations targeted by the optional exceptions, especially given the degree of state variability in whether the populations targeted by the optional exceptions meet those criteria**;

Additional Considerations in the Proposed Rule (continued)

  - Medicaid is the largest source of third-party payment for services billed by IHS/Tribal facilities;
  - There **may be geographic variability** in the degree to which the populations served by behavioral health clinics and clinics located in rural areas **meet the four criteria**; and
  - It is our understanding that **Medicaid funding is less often the largest source of payment** for behavioral health clinics and clinics located in rural areas compared to IHS/Tribal clinics.

- CMS is **not proposing any additional exceptions** to the clinic services four walls requirement.
- CMS **welcomes comments** on our proposed rule. Comments are due **September 9, 2024**, please submit comments following instructions in the Federal Register notice.

Q&A on Medicaid Clinic Services Four Walls Proposed Rule