

**Testimony**  
**Interim Tribal and State Relations Committee**  
**Senator David O'Connell, Chairman**  
**September 26, 2011**

Chairman O'Connell, members of the Interim Tribal and State Relations Committee, I am Maggie Anderson, Director of the Medical Services Division in the Department of Human Services. I appear before you to provide information on the Medicaid expansion and Medicaid Tribal Consultation.

Health Care Reform

The Patient Protection and Affordable Care Act (ACA) was enacted in March 2010. As part of the ACA, each state is required to expand Medicaid coverage for all individuals under the age of 65 to 138 percent of the federal poverty level. The expansion will primarily cover non-disabled individuals who do not have children. The expansion must be implemented by January 1, 2014.

Currently, North Dakota Medicaid uses Net Income for making eligibility determinations. The ACA will require that Medicaid use Modified Adjusted Gross Income (MAGI) for the expansion population as well as most of the current eligibility groups (exception for some groups, such as aged, blind, and disabled).

North Dakota Medicaid provides coverage to over 64,000 individuals today. The Department is estimating that Medicaid enrollment could increase by as much as fifty percent with the implementation of the ACA.

Individuals seeking Medicaid coverage will be able to use the Health Benefit Exchange (HBE), or will be allowed to use other, traditional methods of application. The Department remains involved in a variety of meetings about the HBE and the Medicaid expansion to ensure that the needs of the Medicaid population are considered and being met.

#### Tribal Consultation

The Department previously drafted and distributed a Medicaid and Children's Health Insurance Program (CHIP) Tribal Consultation Policy. Recently, during a meeting with Standing Rock representatives, the Department received feedback that there was a preference for more face-to-face consultation as part of the policy. Based on this feedback, the Tribal Consultation Policy has been updated and is attached.

I would be happy to respond to any questions that you may have.

## **North Dakota Department of Human Services**

### **Medicaid and Children's Health Insurance Program (CHIP) Tribal Consultation Policy**

#### **Background and purpose:**

The American Recovery and Reinvestment Act (ARRA) of 2009 contains provisions for Medicaid that: "In the case of any State in which one or more Indian Health Programs or Urban Indian Organizations furnishes health care services, provide for the process under which they seek advice on a regular, ongoing basis from the designees of such Indian Health Programs and Urban Indian Organizations on matters relating to the application of this title that are likely to have a direct effect on such Indian Health Programs and Urban Health Organization and that: a) shall include solicitation of advice prior to submission of any plan amendments, waiver requests, and proposals for demonstration projects likely to have a direct effect on Indians, Indian Health Programs, or Urban Indian Organizations; and b) may include appointment of an advisory committee and of a designee advising the State on its State plan under this title."

The North Dakota Department of Human Services acknowledges that there are legal and stakeholder partnerships with the Indian Tribes in North Dakota. These partnerships have grown throughout the years and will continue to be an integral part of implementing the revisions set forth by the ARRA and the Patient Protection and Affordable Care Act (ACA).

It is the intent of the North Dakota Department of Human Services to consult on a regular basis with the Indian Tribes established in North Dakota on matters relating to Medicaid and Children's Health Insurance Program (CHIP) eligibility and services, which are likely to have a direct impact on the Indian population. This consultation process will ensure that Tribal governments are included in the decision making process when changes in the Medicaid and CHIP programs will affect items such as cost or reductions and additions to the program. The North Dakota Department of Human Services shall engage Tribal consultation with a State Plan Amendment, waiver proposal or amendment, or demonstration project proposal when any of these items will likely have a direct impact on the North Dakota Tribes and/or their Tribal members.

#### **Process effect:**

To determine if the changes directly impact the Tribal system, questions may include:

**Does the proposal or change directly impact the Tribal Members or Tribal programs, but is federally or statutorily mandated?** If yes, and states have no flexibility in the mandate, a notice will be given to the North Dakota Tribes. If there is some flexibility in implementing the mandate, communication will be initiated between the North Dakota Department of Human Services and the North Dakota Tribes.

**Does the proposal or change impact services or constrict access to services provided by or contracted for IHS or the Indian Tribes (i.e. decrease/increase in services, change in provider or service requirements, cost changes to IHS/Tribal health or change in reimbursement rates?)** In these

situations, communication will be initiated between the North Dakota Department of Human Services and the North Dakota Indian Tribes and Indian Health Services (IHS).

**Does the proposed modification negatively impact or change the eligibility for or access to Medicaid or CHIP for Tribal members?** In this situation, communication will be initiated between the North Dakota Department of Human Services, the North Dakota Indian Tribes and Indian Health Services.

**Communication:**

When it is determined that a proposal or change would have a direct impact on North Dakota Tribes or Tribal members, the North Dakota Department of Human Services will use one or more of the following methods to provide notice or request input from the North Dakota Indian Tribes and IHS.

- a. Indian Affairs Commission Meetings
- b. Interim Tribal and State Relations Committee Meetings
- c. Medicaid Medical Advisory Committee Meetings
- d. Independent Tribal Council Meetings
- e. Written Correspondence to Tribal Chairs, Tribal Healthcare Designees, and Indian Health Services Representatives.

**Ongoing Correspondence:**

- A web link will be located on the North Dakota Department of Human Services website specific to the North Dakota Tribes. Information contained on this link will include: written notices described below, proposed and final State Plan amendments, frequently asked questions and other applicable documents.
- A specific contact at the North Dakota Department of Human Services Medical Services Division, in addition to the Medicaid Director, will be assigned for all ongoing Tribal needs. This contact information will be disseminated in the continuing correspondence with the North Dakota Tribes.

**Notice of changes will be sent to:**

- North Dakota Tribal Governments-Tribal Chairman/Chief of each Tribal entity
  - Tribal Healthcare Directors
- IHS Tribal Health Clinic Executive Directors on each Tribal Reservation
- North Dakota Indian Affairs Commission

- Aberdeen Area Indian Health Services
- Great Plains Tribal Chairmen's Health Board

**Content of the notice will include:**

- Purpose of the proposal/change
- Effective date of change
- Anticipated impact on Tribal population and programs
- Location, Date and Time of Face to Face Consultation OR If Consultation is by Written Correspondence, the Method for providing comments and a timeframe for responses.

**Meeting requests:**

In the event that written correspondence is used and a written response is not sufficient due to the extent of discussion needed by either party, The North Dakota Department of Human Services or North Dakota Tribes can request a face to face meeting with 30 days by written notice, to the other party.