




**Legislative & Policy
Update**

Quarterly Board Meeting
Hosted by the Suquamish Tribe
January 22, 2018



Report Overview

1. 2018 Mid Term Elections
2. Legislation
3. GAO Reports
4. IHS Budget Formulation Process
5. Current & Pending Federal Policies
6. Litigation
7. Upcoming National/Regional Meetings



**2018 Mid Term
Elections**

2018 Midterm Elections

- 116th Congress
 - Senate: Republican Majority
 - 53 Republicans, 47 Democrats
 - House: Democratic Majority
 - 235 Democrats, 199 Republicans
- Governor Races: 23 Democratic Governors, 27 Republican Governors.
- Medicaid Expansion: Idaho (61%)- will expand coverage for 2,500 AI/ANs



Legislation

5

IHS Appropriations FY 2019

- In Partial Government Shutdown
 - Continuing resolution expired 12/21/18
- H.R. 266 -- Department of Interior, Environment, and Related Agencies Appropriations Act, 2019
 - Introduced by Rep. Betty McCollum (D-MN-4) on 1/8/19.
 - Passed House on 1/11/19 (240-179)
 - Status: Senate Legislative Calendar
- H.R. 21 – Consolidated Appropriations Act
 - Passed House on 1/3/19 (241-190)

Pay Our Doctors Act of 2019 (H.R. 195)

- Introduced by Rep. Markwayne Mullin (R-OK-2) on 1/3/19; 13 co-sponsors.
- Provides funding at the FY 2018 level for IHS in the absence of a continuing resolution from Congress.
- Would end the lapse in funding for IHS, tribal and urban Indian facilities and allow to continued operations.
- Referred to House Committee on Appropriations on 1/3/19.

To Be Introduced Equal Access To Medicaid for All AI/AN

- Tribal Self-Governance Advisory Committee initiative
- The aim is to *fix gaps in access to high-quality health care services* under Medicaid for low- and moderate-income American Indians and Alaska Natives (AI/ANs) across all states.
- Approach:
 - Do no harm.
 - Build on existing administrative infrastructure.
 - Indian health care providers (IHCPs) are defined in federal regulations.
 - Most services to AI/ANs by IHCPs are currently supported with 100% federal funding.
 - Establish new authorities as either “requirements” or “options” based on assessment of: (a) ability to achieve policy goal and (b) ability to enact legislation.

To Be Introduced Equal Access to Medicaid for All AI/AN

- Would authorize Indian Health Care Providers (IHCPs) in all states to receive Medicaid reimbursement for a federally-defined set of health care services—referred to as Qualified Indian Provider Services (QIPS)—when delivered to AI/ANs.
- Would create the option for states to extend Medicaid eligibility to all AI/ANs with household income up to 138% of the federal poverty level (FPL).
- Would extend full federal funding (through 100% FMAP) and the IHS encounter rate to Medicaid services furnished by *urban* Indian health programs to AI/ANs.
- Would clarify federal law and regulations related to AI/AN specific policies.
- Would Address the “four walls” limitations on IHCP “clinic” services.

House E&C Indian Health Task Force



Photo (L): July 23 prep meeting with staff
Photo (R): July 24 meeting with members of Task Force (NPHB photo)




- House Energy & Commerce Committee established the IHS Task Force in 2017.
- Tribes and tribal organizations across Indian country, including NPAIHB, provided input to the Task Force on ways to reform IHS so that it can better serve AI/AN.
- Task Force conducted a survey to tribes in the fall.
- Task Force has not disseminated results of their findings.

GAO Reports

11

GAO Report for IHS Advance Appropriations

- On 9/13/18, GAO issued a report titled, "Indian Health Service: Considerations Related to Providing Advance Appropriation Authority" – GAO-18-652.
- GAO makes recommendations for policy makers to consider
- *Next steps:* In-person testimony, letters, Hill and IHS meetings, tribal conference gatherings - that the FY 2020 Interior and Related Agencies appropriations bill include FY 2021 advance appropriations for the IHS.
- Report available at www.gao.gov




GAO Report on the Affordable Care Act - Pending

- Government Accountability Office (GAO) conducting a study on the effects of the Affordable Care Act on Indian health facilities and on health insurance coverage for AI/AN.
- Visited Portland Area on December 4, 2018
- Collecting information on Portland Area impacts to facility operations (including patient coverage, collections and use of collections, PRC, etc).



IHS Budget Formulation Process

14




FY 2020 IHS Budget

- National Tribal Budget Formulation Workgroup co-chairs presented the recommendations for FY 2020 at the HHS Annual Tribal Consultation in D.C. on March 1 and to HHS Budget Council for the Tribal Budget Formulation in D.C. on April 11.
- Recommends over \$7 billion for FY 2020 (36% increase over FY 2017 enacted level).
- Recommends \$36.83 billion for tribal needs based budget to be implemented over 12 year period.
- Available at:
https://www.nihb.org/legislative/budget_formulation.php




FY 2021 IHS Budget

- Portland Area Budget Formulation Process was on November 15, 2018.
- National Budget Formulation Meeting is scheduled for February 14-15, 2019 in Crystal City.
- Following February meeting, NIHB writes up the recommendation for IHS National Tribal Budget Formulation Workgroup (NTBFW)
- Opportunity for IHS NTBFW to present recommendations at HHS Annual Tribal Consultation scheduled for April 3-4, 2019 in DC.



Current & Pending Federal Policies

17



HHS Report: Reforming America's Healthcare System Through Choice and Competition

- Issued: 12/3/18
- Issues Identified:
 - Health Care Workforce and Labor Markets;
 - Health Care Provider Markets;
 - Health Care Insurance Markets; and
 - Consumer-Driven Health Care.
- Examples of Recommendations:
 - Broaden Scope of Practice
 - Improve Workforce Mobility
 - Facilitate Telehealth to Improve Patient Access
 - Positively Realign Incentives through Payment Reform
 - Using Choice to bring a Longer-Term View to Health Care
 - Quality Improvement and the Measurement and Reporting of Quality
 - Facilitate Price Transparency
 - Improve Health IT

HHS Draft Strategy to Reduce Regulatory and Administrative Burden of Health IT and EHRs

- Comments Due: 1/28/2019
- Purpose: With the passage of the 21st Century Cures Act, Congress directed HHS to establish a goal, develop a strategy, and provide recommendations to reduce EHR-related burdens that affect care delivery.
- Burden Reduction Goals:
 - Reduce the effort and time required to record health information in EHRs for clinicians;
 - Reduce the effort and time required to meet regulatory reporting requirements for clinicians, hospitals, and healthcare organizations; and
 - Improve the functionality and ease of use of EHRs.

HHS Draft Report Pain Management Best Practices

- Comments Due: 4/1/19
- Issued by: Office of the Assistant Secretary for Health, HHS (12/31/18)
- Request for Public Comments on the Pain Management Best Practices Inter-Agency Task Force Draft Report on Pain Management Best Practices: Updates, Gaps, Inconsistencies, and Recommendations
- The Draft Report highlights the progress made towards identifying, reviewing, and determining whether there are gaps in or inconsistencies between best practices for pain management (including chronic and acute pain) developed or adopted by Federal agencies. It includes the Task Force's proposed updates to best practices and recommendations on addressing gaps or inconsistencies.

OCR/HHS Modification of HIPAA Rules to Improve Coordinated Care

- Comments Due: 2/12/19
- Issued by: Office for Civil Rights (OCR); HHS (12/14/18).
- Request for Information on Modifying HIPAA Rules to Improve Coordinated Care
- Additionally, the RFI is soliciting comments within the HIPAA Privacy Rule in relation to the following items:
 - Encouraging information-sharing for treatment and care coordination.
 - Facilitating parental involvement in care.
 - Addressing the opioid crisis and serious mental illness.
 - Accounting for disclosures of Protected Health Information (PHI) for treatment, payment, and health care operations as required by the Health Information Technology for Economic and Clinical Health (HITECH) Act.
 - Changing the current requirement for network providers to make a good faith effort to obtain an acknowledgement of receipt of the Notice of Privacy Practices.

CDC Tobacco Control Practice

- Comments Due: February 11, 2019
- Agency: CDC
- CDC is seeking input to inform future activities to advance tobacco control practices to prevent initiation of tobacco use among youth and young adults; eliminate exposure to secondhand smoke; and identify and eliminate tobacco-related disparities.
- The information gathered will be used to inform activities that encompass technical assistance and guidance to state tobacco control programs and collaborative work with national governmental and nongovernmental partners, who share CDC's goals to prevent initiation of tobacco use among youth and young adults; eliminate exposure to secondhand smoke; and identify and eliminate tobacco-related disparities.

CMS SMD Letter #18-011 New Medicaid Demonstration Opportunity to Expand Mental Health Treatment Services

- Outlines existing and new opportunities for states to design innovative service delivery systems for adults with SMI and children with SED.
- New authority for states to pay for short-term residential treatment services in an IMD for these patients.
- Emphasis that inpatient treatment is just one part of the continuum of care, participating states will be expected to improve community-based mental health care.

CMS Medicaid and CHIP Managed Care Proposed Rule

- Comments Closed: 1/14/2018 (issued 11/18/2018)
- CMS is proposing significant regulatory revisions to streamline the 2016 managed care regulatory framework.
- Reflects a strategy to relieve regulatory burdens, support state flexibility and local leadership, and promotes transparency and innovation.
- Removes barriers that made it difficult to transition new services and populations into managed care.
- No proposed changes to the Indian managed care provisions.
- Our comment letter focused on some of managed care issues raised in our area (access and payments).

CMS Work Requirements Issue

- On 1/17/18, CMS issued a DTLL stating that CMS could not provide an exemption to the work requirements for AI/AN because of civil rights concerns.
- On 5/7/18, CMS updated its position, stating that they would actively consider state proposed accommodations for AI/AN from work requirements on a state by state basis.
- On 9/24/18, at STAC meeting, HHS Deputy Secretary Eric Hargan requested a legal opinion on the AI/AN exemption from work requirements. *Still Pending*
- As of 1/9/19, states with approved work requirement and community engagement waivers include: IN, AR, NH, NC, WI, ME and MI.
- Pending waivers: AZ, MS, OH, OK, SD, UT and VA.

CMS 4 Walls Limitation

- CMS determined that If a Tribal facility is enrolled in the state Medicaid program as a provider of clinical services under 42 CFR 440.90, the Tribal facility may not bill for services furnished by a non-Tribal provider or Tribal employee at the facility rate for services that are provided outside of the facility.
- Per CMS, under FQHC designation there is no requirement that the services be provided within the 4 walls.
- Section 1905 of the SSA recognizes outpatient Tribal clinics as FQHCs.
- CMS FAQ released January 18, 2017.
- Effective Date: January 30, 2021.
- CMS Guidance pending-currently under interval review (over a year).

IHS Indian Health Care Improvement Fund (IHCIF)

- DTLL 6/8/18 Indian Health Care Improvement Fund (IHCIF) Workgroup Recommendations on IHCIF formula changes.
- Comments were due 7/13/18.
- DTLL 8/13/18 with final decisions:
 - Benchmark: National Health Expenditure (was Federal Employee Health Benefits Program)
 - User count: National unduplicated users (was regional)
 - Alternate resources: Statewide averages (was flat 25%)
- Only 3 Portland Area tribes received funding.
- IHCIF Workgroup reconvened to continue phase 2 work for FY 2019
- Last meeting was December 12-13, 2018
- February 11-12 meeting in DC area POSTPONED

Recent IHS DTLLs

- **DTLL on 12/20/18:** IHS notice about IHS Headquarters Reorganization
- **DTLL on 12/11/18:** Update on the Mechanism to Distribute Behavioral Health Initiative Funding
- **DTLL on 11/20/18:** IHS Initiation of Consultation on the PRC program to perform a detailed analysis of PRC implications for the entire State of Arizona to be identified as a PRCDA/CHSDA (Comments were due 1/15/19)
- **DTLL on 11/19/18:** IHS Progress on Certification of Suite of Applications for IHS RPMS to meet Certification Standards in the 2015 Edition Health IT published by the Office of the National Coordinator.

Recent IHS DTLLs Cont'd

- **IHS Blog 11/1:** RADM Michael Toedt, Chief Medical Officer, IHS, announced that IHS has released a new "Internet Eligible Controlled Substance Provider Designation" policy (IHM, Ch. 38, part 3) to increase access to the treatment of opioid use disorder for AI/AN living in rural or remote areas.
- **DTLL on 10/29/18:** Developments related to IHS and Department initiatives to modernize health information technology (consultation is open).

Pending IHS Responses

- **IHS Draft Strategic Plan FY 2018-2022;** DTLL on 7/24/18; comment period closed.
- **Special Diabetes Program for Indians** funding distribution for FY 2019; DTLL issued 7/12/18
 - *Follow-up:* Stated that RADM Weahkee to ask Area Directors to meet with tribal leaders to discuss the Area's proposed budget for its share of the SDPI FY 2019 data infrastructure fund.
- **IHS Sanitation Deficiency System (SDS);** DTLL on 7/2/18; comment period closed.

Pending IHS Responses Cont'd

- **IHS Manual, PRC Chapter Revisions;** DTLL on 5/18/18; comment period closed.
- **Contract Support Costs – Indian Health Manual, Chapter 3 CSC,** rescission of 97/3 split language; DTLL 4/13/18; comment period closed.
- **CHEF Regulation / Redding Rancheria** Case

VA Updates

- **Suicide Prevention Initiatives**
 - Focus on using prevention approaches that cut across all sectors that Veterans may interact, including states.
- **Appeals Modernization**
 - Simplification of the appeals process. Veterans will have 3 options for claims and appeals beginning February.
- **Mission Act Implementation**
- **VA Care Coordination Committee**
 - Focus on barriers and challenges of care coordination with VA.
- **VA TAC bill (S.3269)**
 - Will be reintroduced and be pushed forward in 116th Congress.

Litigation

Brakeen v. Zinke

Challenge to ICWA

- On October 5, 2018, Judge Reed O'Connor (USDC ND Texas) ruled that ICWA is unconstitutional.
- Found that *Morton v. Mancari* rule does not apply because ICWA extends to Indians who are not members of tribes.
- ICWA struck down in violation of equal protection.
- **Current Status:** Decision appealed to the U.S. Court of Appeals for the Fifth Circuit.

Texas v. United States

Challenge to Affordable Care Act

- On December 14, 2018, Judge Reed O'Connor (USDC ND Texas) found that Congress' 2017 elimination of the ACA individual tax penalty for non-compliance with not having health insurance resulted in the mandate invalid.
- Reasoning:
 - In the absence of a tax, Congress has no authority to issue a mandate.
 - Individual mandate essential to the rest of the ACA, not "severable"
- If ACA struck down, then IHIA could also be struck down.
- **Current Status:**
 - Decision appealed to U.S. Court of Appeals for the Fifth Circuit.
 - No impact to IHIA during appeal

Opioid Litigation

- All federal court lawsuits have been combined in multi-district litigation under Federal District Judge Dan A. Polster (USDC-ND Ohio)
- More than 1,100 cases were filed against pharmaceutical manufacturers, distributors, and retailers of prescription opiate drugs.
- Nearly 100 tribes and tribal organizations have filed complaints to join the litigation
- Tribal Amicus Brief: 448 tribes and tribal organizations signed on and provided statements of interest (NPAIHB, ATNI, NCA), and NIHB).
- For each test case, defendants have filed motions to dismiss.
- Judge issued ruling in Track One Cases.
- Judge found that nearly all the claims alleged are sufficient to survive Defendants' motions to dismiss.
- Gives an indication of potential ruling in Tribal Track cases.

Upcoming National/Regional Meetings



January--February 2019

- IHS Tribal Self Governance Advisory Committee, January 22-23, Washington DC (RESCHEDULED to April 24-25)
- ATNI Winter Convention, January 28-31, Portland
- CDC Meeting, February 5-6, Atlanta, GA.
- HHS STAC Meeting, February 7-8, Washington, D.C.
- NCAI Executive Council Winter Session, February 10-14, Washington, D.C.
- DSTAC meeting, February 12-13, Washington, D.C. (POSTPONED)
- IHCF meeting, February 12-13, Rockville, MD (POSTPONED)

February-March 2019

- National Tribal Budget Formulation Meeting, February 14-15, 2018, Crystal City, VA
- MMPC/TTAC Meetings, February 19-21, Washington, DC
- NIHB Board Meeting, February 24
- SAMHSA TTAC/NTAC, March 11-14, (TBD), California
- TLDC, March 19-20, Washington, DC
- MMPC Strategy Session, March 19-20, Bemidji
- NIH TAC Meeting, March 21-22, Bethesda, MD
- TSGAC Annual Conference, March 31-April 4, Traverse City, MI



Discussion



HHS Secretary's Tribal Advisory Committee (STAC) Meeting, Fairbanks, Alaska, September 2018
