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PUEBLO of JEMEZ

Pueblo of Jemez
Position Statement
Presented by Governor Joshua Madalena to the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

June 25, 2012
State Capitol, Room 307
Santa Fe, NM

Good Afternoon, Members of the Legislative Health and Human Services Committee.
My name is Governor Joshua Madalena of the Pueblo of Jemez.

I have come here today to share the position of the Pueblo of Jemez as it relates to the proposed Centennial Care Plan, or Medicaid Modernization.

For your information, the Pueblo of Jemez has a tribally managed and accredited ambulatory care center within the pueblo. We have a user population of 2,607 and 28% of that population is Medicaid eligible. As such, the Pueblo of Jemez collects revenue for Medicaid services and that revenue comprises 70% of our overall revenue generation.

Although no one from the State has asked for our health data, the State feels compelled to publicly state that health of Native Americans is no better today than it was a decade ago. The Pueblo of Jemez can demonstrate that it has met or exceeded many clinical standards under GPRA. GPRA (Government Performance Results Act) is the tool used by the IHS to report to Congress on the quality of care provided to Native patients. GPRA measures include clinical, such as various diabetes measures, cancer screening and others; quality of care; prevention, such as immunizations and injury prevention; and infrastructure, such as access to or improved sanitation facilities. This data drives the budget for Indian Health Service and thus, the tribes.

You may also want to know that as part of our recent accreditation survey, we were commended for being a model for what medical health homes should look like in rural communities.

It may also be important for you to know that the Pueblo of Jemez, specifically our Health and Human Services Department, is the largest employer in our community.

I say all of this so that you understand why I oppose the Centennial Care Plan.

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First, the Centennial Care Plan is an attack to tribal sovereignty. The State has a responsibility by its own law, the New Mexico's State Tribal Collaboration Act, to develop policies that promote communication and cooperation between the State and Tribal Governments. The State has failed to conduct good faith tribal consultation with the Tribes of our State. This is demonstrated in their failure to notify tribes 60 days prior to submitting the waiver. The State called it a technicality. On the contrary, tribal consultation is not a technicality – it is a federal mandate. This recent withdrawal of the waiver is tantamount to the Centennial Plan development and implementation. We believe the State will simply sit on the waiver until its time to resubmit. The State insists that it is hearing us and our concerns. But to date, the content of the waiver remains intact from its inception. In fact, the State has indicated that they are considering any and all interim discussions held, regardless of who was present to be Tribal consultation and have alluded to the potential that the original Centennial Care document may not change at all.

In regards to health care, the requirement from tribal consultation should be paramount as the Pueblo of Jemez, like many tribes in New Mexico, has exercised its right under P.L. 93-638 law to contract health care funds that would have been spent by the IHS on our individual tribal membership. We then determined and designed the best health care system for our tribal population. Without consultation, the State's plan proposed to pull our large Medicaid eligible population into an MCO that is not a part of our sovereign design. To add insult to injury, the State is positioned to pay these MCOs a healthy capitated rate for assuming the risk of caring for Native Americans.

Like me, Native American representatives and tribal leadership have advocated for the restoration of the fee-for-service option, citing negative experiences with managed care long before the implementation of CoLTS Program in 2008. The State has said it will not fail to ensure that my people's needs are taken care of through an MCO. However, the State's track record tells a different story.

Waitlists for services remain in the thousands, and MCO outreach and education in rural areas has been insufficient and ineffective. There are concerns regarding access to MCO providers for rural/tribal communities.

In addition, existing MCO's have not only failed to coordinate care in many instances, but also the brunt of the care coordination falls on our tribal benefit coordinators and the cost for the care on our tribal health departments.

I want to share with you an example of the challenges the Pueblo of Jemez has faced with an existing State MCO.

The patient, who has Von Hippel-Landau Syndrome, mental retardation/developmental delay, hydrocephalus, is post craniotomy and legally blind required dental surgery for multiple extractions.

This procedure required anesthesia and was scheduled to be performed at Presbyterian Hospital. The patient is covered by Amerigroup.

- The oral surgeon scheduled to provide the surgery was an approved dental provider under Amerigroup's dental subcontractor, but not for services provided in a hospital setting.
- Jemez was asked whether Jemez Contract Health Services would be able to pay the surgeon.
- The Dental Surgeon refused to go forward with the procedure unless guaranteed payment (his office manager indicated that past experience with Amerigroup resulted in non –payment for services).
- The Jemez representative contacted Amerigroup and obtained an Authorization Request Form which was completed and forwarded to the surgeon's office at their request along with a detailed letter from the patient's primary care provider outlining the various vulnerabilities of the patient which required the procedure be performed in a hospital.
- Authorization for the facility itself did not seem to present a problem.
- Almost four months later (two months after the surgery was completed), the patient received a "Claim Denied Notification Letter" rejecting payment because of other insurance coverage.
- The Jemez Representative contacted Amerigroup Claims "EDI" and received a recording. Finally an Amerigroup representative indicated the claim had been paid.
- In fact, only the hospital claim had been paid and not the Surgeon.
- After another round of calling with no results, an email appeal of the rejection was sent.
- Jemez Contract Health Services was listed by Amerigroup as the Primary Payment source, they were finally convinced that Pueblo is the payor of last resort. Primary payer was not specified.
- To date we continue to work with Amerigroup in order to get the surgeon's fee paid. CHS paid this last fall. Unsure what efforts may be underway to seek reimbursement.
- Jemez has paid the surgeon out of Contract Health Services funds in order to protect the patient's family from collection attempts.
- End result: from start to finish it took five months for the fully covered patient to receive the needed services and Jemez Contract Health Services still paid $300 out of pocket to make it happen.
- There is no estimate for the time and effort put forth by our benefit's coordinators to get this done.

- Here again Amerigroup as the MCO has received from State Medicaid funds, the per- member per-month payment, for providing health care to this patient, while Jemez did all of the intervention work because the patient is a member of the Jemez community.

In the scenario described, our health system received no funds for the extensive care coordination conducted for the patient, yet the MCO took the capitated rate for that patient each month from the State. The MCO was paid but failed to meet the needs of my tribal member. As a result, we ended up using our contract health funds to get this patient the needed services.

One important note is that the state played no role in managing this MCO, though this is their contractor.

Secondly, I oppose this plan because it will negatively affect the economy of our community. The Pueblo of Jemez is a rurally located, non-gaming tribe. We work diligently to maximize 3rd party billing. We use Medicaid and other third party resources to supplement the cost of care for our patients. An interruption or reduction in the flow of third party revenue would negatively impact our health system and our ability to maintain current levels of service; it would certainly not allow for expansion of services. Good spot to mention elimination of three month retroactive payment. The State says there will be no negative impact on payments to tribes for reimbursement. Maybe so, but here is just one example of our experience.

Between 2009 and 2010, the Pueblo of Jemez began working with Evercare. In the first year of our relationship, for just that one MCO relationship, the Pueblo of Jemez was not reimbursed for the entire year. Though we later recovered it, the Pueblo of Jemez has no other sources of income to float the cost of care for our patients.

However, the reimbursement is not the only cost we are concerned about. Here is another example of effort Jemez has had to undertake to make the MCO system work for our patients:

The patient is a young man who suffered a brain injury about two years ago which left him with functional impairment and chronic pain.

Jemez tried to work with Evercare in order to obtain services for this patient.

- On December 2011, a recommendation for home based occupational therapy was made by Lovelace Rehab Hospital upon discharging this patient.
- Jemez Health Center faxed an in-house physician order for in home-OT to Evercare.
- Jemez Coordinator placed a call to Evercare and was referred to Justin Goad, Service Coordinator.
- Jemez Coordinator was told by Evercare that she could not talk directly with service coordinators, but that they had to send service coordinator an email message. There were no results from Evercare Service Coordination area, despite some additional failed attempts to contact.
- The patient's mother requested that Jemez staff make further attempts with Evercare Jemez
- staff was told that there was no record of a physician order being received.
- Jemez then sent another copy of the physician order to Evercare, along with a copy of the original FAX document so Evercare could "back date" the authorization.
- Jemez also faxed again the Lovelace recommendation for in–home occupational therapy.
- After more calls, the Evercare Utilization Management department finally connected the Jemez representative with the service coordinator.
- Jemez had to explain the patient's needs to service coordinator; the service coordinator then provided 2 possible OT providers for us or the family to contact.
- Neither of these two recommended providers could provide the needed services.
- After several information exchanges, Jemez received an authorization for our own health department to provide the in-home occupational therapy for this patient.
- Jemez does not have an Occupational Therapist on staff.
- Evercare was advised we could not provide the OT services, to no avail.
- Our Jemez representative began "cold calling" occupational therapy providers; 20 calls were made.
- Providers either had the service but didn't accept Evercare or did not provide the service at all .The end result was that Jemez found a therapist to provide in home services. However, Jemez Contract Services Office had to use Pueblo of Jemez funds to pay for the services.
- Many hours of time were spent by the Jemez representative helping the family of this patient obtain services which will finally begin **6 months after** the initial order was written.
- Despite this series of events, Evercare was able to collect State funds (the Per Member Per Month amount paid by State Medicaid for the MCO services)
- Jemez spent many hours and dollars to help this Jemez Pueblo member.

Please understand, it has fallen on the tribes to acquaint MCO's with our status as payors of last resort. However, the MCO's are fully aware that we may have contract health care funds to

supplement what they will not pay. Again, the State has not managed their own contractors in a way that protects the right and access to care for Native American patients.

Members of the Committee, for the reasons stated, the Pueblo of Jemez simply has no faith that the proposed Centennial Care plan will benefit our community or any other tribal community in this State.

Many tribes in New Mexico feel the same way. On behalf of all of us, I share with you the following:

1. Tribes want to have direct communication with Governor Martinez to discuss the 1115b waiver, the process and health impact to Native Medicaid population.

2. Tribes request a meeting with CMS and State Medicaid Assistance Division simultaneously to discuss implementation of the waiver and impact on Native Medicaid population health care.

3. Based on tribal sovereignty, the Affordable Care Act and other such legal protections, there is no mandatory participation for Natives to enroll in Managed care, nor is there a penalty if a Native does not buy health insurance.

4. Therefore, the state must concede to maintain Fee-For-Service (FFS) for tribes and support the 'opt out' option currently in place. The tribes want this in writing, in the waiver.

5. The State has repeatedly indicated that under the fee for service plan, innovative block grants and unique plans designed for individual tribes are not possible. The Pueblo of Jemez believes that the opposite is true.

6. If the "opt-out" provision is maintained for Tribes, the State can proceed with the centennial care plan for all other NM populations, and can work with individual tribal organizations to design a system, in true Government to Government good faith negotiations. Individually, tribes may pursue block grant or sub capitated rate plans, or not. Bottom line is the state must design and develop Medicaid Modernization with Tribes as stated in Federal and State consultation laws.

7. Tribes want to see the No cost sharing and No mandatory participation in managed care, in writing, in the waiver.

8. Tribes feel the 1115 waiver is incomplete. We want to see the State's track record. We want to see and discuss the tribal health outcomes data from existing managed care relationships, inclusive of Fee-For-Service (FFS) data from managed care providers.

9. Tribes **do not** want "Retroactive Coverage" eliminated. The state is seeking waiver authority to stop paying healthcare providers for certain medical bills. Currently Medicaid has a feature called "retroactive eligibility" where children and adults who are eligible for Medicaid can get their medical bills reimbursed for the three months before they were officially enrolled in the program. This ensures that low-income families are not sent to collections for unpaid medical bills. Hospitals and Indian health providers will face the loss of hundreds of millions of dollars of revenue statewide and bear the costs of unpaid patient debt.

10. The State's assumption that retroactive eligibility will not be needed as of January 2014 because everyone will have health coverage is incorrect. Native Americans and very low income people are exempt from healthcare reform's mandate to get coverage and may not enroll right away. Many of them will have medical debt prior to seeking coverage.

I want to make one final point. On Tuesday, we were notified that the State has no intention of calling a tribal consultation meeting prior to the resubmission of the waiver request. As lack of proper tribal consultation played a significant role in the waiver being withdrawn, I want to tell you now of my intent to request a tribal consultation under the State-Tribal Collaboration Act. To date, the State has just committed itself to try and meet the procedural points of the act, but has fallen far short of meeting the spirit of the act. For your review, I am providing our position paper, which I believe will detail the missed opportunities to collaboratively develop a Medicaid modernization plan.

This concludes my comments. As a Governor, I am charged with ensuring the protection and well-being of my people. I sincerely believe that the comments and experiences I shared with you today are similar to those of other tribal communities.

Thank you for the opportunity to speak to you.