

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 7. SOCIAL SECURITY ACT  
TITLE XIX. GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

§ 1396u-2. Provisions relating to managed care

...

(h) Special rules with respect to Indian enrollees, Indian health care providers, and Indian managed care entities.

(1) Enrollee option to select an Indian health care provider as primary care provider. In the case of a non-Indian Medicaid managed care entity that--

(A) has an Indian enrolled with the entity; and

(B) has an Indian health care provider that is participating as a primary care provider within the network of the entity,

insofar as the Indian is otherwise eligible to receive services from such Indian health care provider and the Indian health care provider has the capacity to provide primary care services to such Indian, the contract with the entity under section 1903(m) [42 USCS § 1396b(m)] or under section 1905(t)(3) [42 USCS § 1396d(t)(3)] shall require, as a condition of receiving payment under such contract, that the Indian shall be allowed to choose such Indian health care provider as the Indian's primary care provider under the entity.

(2) Assurance of payment to Indian health care providers for provision of covered services. Each contract with a managed care entity under section 1903(m) [42 USCS § 1396b(m)] or under section 1905(t)(3) [42 USCS § 1396d(t)(3)] shall require any such entity, as a condition of receiving payment under such contract, to satisfy the following requirements:

(A) Demonstration of access to Indian health care providers and application of alternative payment arrangements. Subject to subparagraph (C), to--

(i) demonstrate that the number of Indian health care providers that are participating providers with respect to such entity are sufficient to ensure timely access to covered Medicaid managed care services for those Indian enrollees who are eligible to receive services from such providers; and

(ii) agree to pay Indian health care providers, whether such providers are participating or nonparticipating providers with respect to the entity, for covered Medicaid managed care services provided to those Indian enrollees who are eligible to receive services from such providers at a rate equal to the rate negotiated between such entity and the provider involved or, if such a rate has not been negotiated, at a rate that is not less than the level and amount of payment which the entity would make for the services if the services were furnished by a participating provider which is not an Indian health care provider.

The Secretary shall establish procedures for applying the requirements of clause (i) in States where there are no or few Indian health providers.

(B) Prompt payment. To agree to make prompt payment (consistent with rule for prompt payment of providers under section 1932(f)) [42 USCS § 1396u-2(f)] to Indian health care providers that are participating providers with respect to such entity or, in the case of an entity to which subparagraph (A)(ii) or (C) applies, that the entity is required to pay in accordance with that subparagraph.

(C) Application of special payment requirements for federally-qualified health centers and for services provided by certain Indian health care providers.

(i) Federally-qualified health centers.

(I) Managed care entity payment requirement. To agree to pay any Indian health

care provider that is a federally-qualified health center under this title [42 USCS §§ 1396 et seq.] but not a participating provider with respect to the entity, for the provision of covered Medicaid managed care services by such provider to an Indian enrollee of the entity at a rate equal to the amount of payment that the entity would pay a federally-qualified health center that is a participating provider with respect to the entity but is not an Indian health care provider for such services.

(II) Continued application of State requirement to make supplemental payment. Nothing in subclause (I) or subparagraph (A) or (B) shall be construed as waiving the application of section 1902(bb)(5) [42 USCS § 1396a(bb)(5)] regarding the State plan requirement to make any supplemental payment due under such section to a federally-qualified health center for services furnished by such center to an enrollee of a managed care entity (regardless of whether the federally-qualified health center is or is not a participating provider with the entity).

(ii) Payment rate for services provided by certain Indian health care providers. If the amount paid by a managed care entity to an Indian health care provider that is not a federally-qualified health center for services provided by the provider to an Indian enrollee with the managed care entity is less than the rate that applies to the provision of such services by the provider under the State plan, the plan shall provide for payment to the Indian health care provider, whether the provider is a participating or nonparticipating provider with respect to the entity, of the difference between such applicable rate and the amount paid by the managed care entity to the provider for such services.

(D) Construction. Nothing in this paragraph shall be construed as waiving the application of section 1902(a)(30)(A) [42 USCS § 1396a(a)(30)(A)] (relating to application of standards to assure that payments are consistent with efficiency, economy, and quality of care).

(3) Special rule for enrollment for Indian managed care entities. Regarding the application of a Medicaid managed care program to Indian Medicaid managed care entities, an Indian Medicaid managed care entity may restrict enrollment under such program to Indians in the same manner as Indian Health Programs may restrict the delivery of services to Indians.

(4) Definitions. For purposes of this subsection:

(A) Indian health care provider. The term "Indian health care provider" means an Indian Health Program or an Urban Indian Organization.

(B) Indian medicaid managed care entity. The term "Indian Medicaid managed care entity" means a managed care entity that is controlled (within the meaning of the last sentence of section 1903(m)(1)(C) [42 USCS § 1396b(m)(1)(C)]) by the Indian Health Service, a Tribe, Tribal Organization, or Urban Indian Organization, or a consortium, which may be composed of 1 or more Tribes, Tribal Organizations, or Urban Indian Organizations, and which also may include the Service.

(C) Non-Indian medicaid managed care entity. The term "non-Indian Medicaid managed care entity" means a managed care entity that is not an Indian Medicaid managed care entity.

(D) Covered medicaid managed care services. The term "covered Medicaid managed care services" means, with respect to an individual enrolled with a managed care entity, items and services for which benefits are available with respect to the individual under the contract between the entity and the State involved.

(E) Medicaid managed care program. The term "Medicaid managed care program" means a program under sections 1903(m), 1905(t), and 1932 [42 USCS §§ 1396b(m), 1396d(t), 1396u-2] and includes a managed care program operating under a waiver under section 1915(b) or 1115 [42 USCS § 1396n or 1315] or otherwise.