

Status of Implementing Legislation Regarding the Eastern Band of Cherokee Indians

Session Law 2015-241, Section 12C.10.(h)



**Report to
The Joint Legislative Oversight Committee on
Health and Human Services**

By

**North Carolina
Department of Health and Human Services**

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Reporting Requirements

North Carolina Session Law (SL) 2014-100, Section 12C.3. and SL 2015-241, Section 12C.10. require the transfer of certain services to the Eastern Band of Cherokee Indians (EBCI), and modifications and enhancements to the Medicaid, NC Health Choice and Food and Nutrition Services (FNS) programs to accomplish the identified goals. SL 2015-241, Section 12C.10.(h) established a quarterly reporting requirement on the status of implementation to begin October 1, 2015, and end when implementation is complete. The NC Department of Health and Human Services (DHHS or Department) in collaboration with the EBCI Public Health and Human Services (PHHS) provides the following report in accordance with the NC legislation.

Background

An estimated 15,500 North Carolinians are members of the EBCI Tribal trust lands in Cherokee, Graham, Haywood, Jackson, and Swain counties (hereafter referred to as Counties). EBCI is a federally recognized Indian tribe under federal law and is asserting its inherent sovereign authority to assume responsibility for certain human services by April 1, 2017.

SL 2014-100, Section 12C.3., and SL 2015-241, Section 12C.10. authorized the EBCI Tribe to assume responsibility for certain social services including Medicaid, NC Health Choice and FNS public assistance programs and ancillary services, including Medicaid administrative and service related functions and related reimbursements no later than October 1, 2016. Pursuant to SL 2016-94, Section 12C.2.(a), the General Assembly extended the effective date to April 1, 2017.

Implementation Update

Meetings continued throughout the quarter (April, 2017-June, 2017) among PHHS, County Departments of Social Services (County DSS), and DHHS Office of the Secretary, Division of Medical Assistance (DMA), Division of Aging and Adult Services (DAAS), and Division of Social Services (DSS) targeting the transition of the child and adult protective services and guardianship cases remaining in the Counties and the management of new referrals. Tribal Council approved the guardianship and adult protective service laws in February, 2017. This action enabled the Tribal and State courts to conduct the required judicial actions for the transfer of adult cases as appropriate.

Implementation Update for NC Medicaid, NC Health Choice and FNS

Executive leadership from DHHS and the Tribe continued to collaborate on the project to ensure a successful transfer of services from the county DSS offices to EBCI. The Department remains fully committed to assisting EBCI to ensure a smooth transition of Medicaid and FNS services from the applicable county DSS offices to the Tribe.

During this last quarter, the project encountered an issue concerning the disclosure of Federal Tax Information (FTI) data to EBCI. This data use is granted by the federal agency and it did not identify EBCI as a legitimate recipient of the data in the scope of the current project. This denial required that EBCI and DHHS delay the project's go-live date. As such, the April 1, 2017 go-live date was not achieved and project staff are working to alleviate the federal agency issues and reset for a later go-live date.

EBCI and DHHS worked collaboratively on meeting the April 1, 2017 effective date as required in Session Law 2016-94, Section 12C.2.(a). Both entities have worked toward completion of their respective tasks and have openly shared information to ensure that the project stayed within the timelines. Despite those efforts, there are certain tasks that cannot be completed prior to resolving issues around security of data regulated by federal agencies.

Approval of the State Plan Amendment (SPA) from the Centers for Medicare and Medicaid Services (CMS) was the first step. That SPA was approved on February 24, 2017. This CMS approval triggered requests to the Social Security Administration (SSA) and the Internal Revenue Service (IRS) concerning disclosure and safeguards of data. Earlier communication with SSA indicated that their approval would be forthcoming. In June of 2017, the SSA approved the disclosure of SSA data to EBCI through the DHHS state agency. SSA indicated that the master contract with the EBCI for the programs must state that DHHS would be responsible for ensuring the EBCI abides by the terms and conditions of the North Carolina Computer Matching Agreements (CMS) and DHHS Information Exchange Agreement (IEA) with the SSA. DHHS and EBCI will amend the master contract in the next quarter.

At this point, DHHS and EBCI continue to work with the IRS concerning these issues. However, the timeline for resolution is currently indeterminate. DHHS and EBCI legal departments have worked to assemble arguments to be presented to the IRS. These arguments identified ways in which the IRS concerns for disclosure of permissible FTI data could be addressed and alleviated. While consensus has not been reached, important research and work has been accomplished and will be presented to leadership from EBCI and DHHS for analysis and action.

The federal approvals determine the necessary access and disclosure of data containing FTI to EBCI. Access to this data allows for the completion of the remaining project tasks including distributing notices to the recipients, transferring of individual recipient cases, and completing the training for program integrity.

During this quarter, the DHHS Project Management Office (PMO) and EBCI prepared a contingency plan that kept the project activity moving and established a go-live date of no later

than 90 days once the IRS approval is resolved. The plan only contains tasks related to IRS approval or tasks that must be done at the end of the project.

DHHS application partners such as NC FAST, NCTracks and the legacy application placed their applications in 'ready but waiting' status. Each application will take a minimum amount of time in the projected 90 days to bring itself online and be ready for the EBCI. During the 90-day period, the Operational Support Team (OST) and NC FAST will provide refresher training on the programs and applications. Final on-site training will continue for the two-week period following go live, as originally planned.

Additional Initiatives

Substantial collaboration between DHHS and EBCI continues regarding the 1115 Medicaid Waiver submitted to CMS on June 1, 2016. There have been several discussions between DHHS and the Cherokee Indian Hospital Authority (CIHA) to prepare for the Tribal Managed Care Organization (MCO) as described in the 1115 Waiver application. In the upcoming quarter, DHHS and PHHS and CIHA plan to conduct additional work sessions to discuss mechanisms for addressing identified health disparities for the Cherokee and approaches for the Tribe to assist the region in access to quality health care.

DHHS and EBCI have taken steps to implement the policy changes that went into effect based on the February 26, 2016, CMS State Health Official letter (SHO) #16-002 rule change in payment policy affecting federal funding for services received by AI/AN Medicaid-eligible individuals through facilities of Indian Health Service (IHS) or referred to non-Tribal providers at a rate of 100 percent Federal Medical Assistance Percentage (FMAP). The programmatic and administrative changes required by EBCI are underway. Additional sessions will be conducted between DMA and CIHA in the upcoming quarter to ensure that documentation is submitted to NCTracks to track the referrals to non-native providers.