

Tribal Technical Advisory Group

To the Centers for Medicare & Medicaid Services

c/o National Indian Health Board 926 Pennsylvania Avenue, SE Washington, DC 20003 (202) 507-4070 (202) 507-4071 fax

August 30, 2011

Submitted electronically to: <http://www.regulations.gov>

Centers for Medicare & Medicaid Services
Office of Strategic Operations and Regulatory Affairs
ATTN: Document Identifier: CMS-10137
Room C4-26-05
7500 Security Avenue
Baltimore, MD 21244-1850

RE: Comments on CMS-10137; Federal Register Notice July 1, 2011

I write on behalf of the Tribal Technical Advisory Group (TTAG) to the Centers for Medicare and Medicaid Services (CMS)¹ regarding information requests published in the *Federal Register* involving “Application for Prescription Drug Plans; Application for Medicare Advantage Prescription Drug; Application for Cost Plans to Offer Qualified Prescription Drug Coverage; Application for Employer Group Waiver Plans to Offer Prescription Drug Coverage; Service Area Expansion Application for Prescription Drug Coverage” (CMS-10137).

TTAG advises CMS on Indian health policy issues involving Medicare, Medicaid, the Children’s Health Insurance Program, and any other health care program funded (in whole or part) by CMS. In particular, TTAG focuses on providing policy advice to CMS regarding improving the availability of health care services to American Indians and Alaska Natives (AI/AN) under these Federal health care programs, including through providers operating under the health programs of the Indian Health Service, Indian Tribes, tribal organizations and urban Indian organizations (I/T/U).

The above-captioned *Federal Register* notice seeks public comments on documents related to the 2013 operation of the Medicare Part D program. Pursuant to CMS regulation at 42 CFR 423.120, Part D plans must offer standard contracting terms and conditions to I/T/U pharmacies that conform to the model addendum developed by CMS.²

We were encouraged to see that the materials offered for public comment contain versions of the model I/T/U addendum that have been updated to reflect changes in Federal law made by the Patient Protection and Affordable Care Act (ACA).

The I/T/U addendum is a critically important tool that ensures that I/T/U can meaningfully participate in Medicare Part D plans. By setting out applicable Federal law in a single comprehensive Indian contract addendum, the I/T/U addendum has both improved compliance with Federal law as well

¹ Sec. 5006(e) of the American Recovery and Reinvestment Act codifies in statute, at sections 1902(a)(73) and 2107(e)(1)(C) of the Social Security Act, the requirement for the Secretary of Health and Human Services to maintain a Tribal Technical Advisory Group within CMS and the requirement that States seek advice from Tribes on a regular and ongoing basis where one or more Indian health program or urban Indian organization furnishes health care services.

² Medicare Advantage plans offering Part D drug coverage are likewise required to use the I/T/U addendum.

as reduced the costs and administrative burdens associated with negotiating these provisions for both the Part D plans and I/T/U providers. These provisions include, among other things, application of the Federal Tort Claims Act and a waiver from the requirement to carry professional liability insurance, as well as an exemption from state licensing requirements. By providing that the requirements listed in the I/T/U addendum supersede any other inconsistent provisions in a Part D plan, the I/T/U addendum ensures that I/T/U providers can participate in the Medicare Part D program.

We support the continued use of the I/T/U addendum in connection with Medicare Part D plans. It has proven to be efficient, effective and easy to use for both Medicare Part D plan sponsors and Indian health pharmacies.

For the same reason, we believe it would be beneficial to require that a similar I/T/U addendum be used in connection with the Exchange plans called for under the Affordable Care Act. As the I/T/U experience with Medicare Part D demonstrates, the use of a mandatory I/T/U addendum is critical to facilitating participation by I/T/U – and the provision of timely, accessible services to AI/AN – under the Part D program.

The same will hold true with regard to Exchange plans. Without the use of an I/T/U addendum, it will be difficult and inefficient for I/T/U providers to negotiate separately with each health plan offered through an Exchange, many of which may not be familiar with the Federal laws that apply to I/T/U. Although these laws apply in any event, setting them out in one place increases compliance and reduces the administrative costs and burdens on both the Exchange plan issuers and I/T/U providers from negotiating them. As such, we are recommending that CMS require health plans offered through an Exchange to use a similar I/T/U addendum.

To that end, we urge the CMS/Center for Medicare to share its experiences involving the mandatory use of the I/T/U addendum under Part D plans with the CMS/Center for Consumer Information and Insurance Oversight (CCIIO) in order that CCIIO more fully understands the applicability and benefits of requiring a similar mechanism for Exchange plans.

Thank you for your consideration of these comments.

Sincerely yours,



Valerie Davidson
Chair, CMS Tribal Technical Advisory Group

Cc: Jonathan Blum, Director, Center for Medicare
Kitty Marx, Director, Tribal Affairs Group, CMS
Steve Larsen, Director, Center for Consumer Information and Insurance Oversight