

Tribal Technical Advisory Group

To the Centers for Medicare & Medicaid Services

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Submitted via regulations.gov

December 26, 2012

Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention CMS-9972-P
P.O. Box 8012
Baltimore, MD 21244-1850

RE: Comments regarding CMS-9972-P; Patient Protection and Affordable Care Act; Health Insurance Market Rules; Rate Review

I write on behalf of the Tribal Technical Advisory Group (TTAG) to the Centers for Medicare and Medicaid Services (CMS) regarding the request for comments on CMS-9972-P pertaining to the Patient Protection and Affordable Care Act; Health Insurance Market Rules; Rate Review published in the *Federal Register* on November 26, 2012 (Proposed Rule).¹ We appreciate the opportunity to comment on the proposed health insurance market rules and rate review. We provide below recommended additions to the Notice of Denial of Medical Coverage (or Payment) (“NDMCoP”) as well to the Form Instructions for the NDMCoP.

The 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 CMS² In particular, the 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).³

¹ 77 Federal Register 70584.

² 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.

³ The abbreviation “I/T/U” means the Indian Health Service (IHS), an Indian Tribe, tribal organization or urban Indian organization, and is sometimes referred to collectively as “Indian Health Care Providers”. The term “Indian Health Service” means the agency of that name within the U.S. Department of Health and Human Services established by Sec. 601 of the Indian Health Care Improvement Act (IHCIA), 25 USC §1661. The term “Indian Tribe” has the meaning given that term in Sec. 4 of the IHCIA, 25 USC §1603. The term “tribal organization” has the meaning given that term in Sec. 4 of the IHCIA, 25 USC §1603. The term “urban Indian organization” has the meaning given that term in Sec. 4 of the “IHCIA”, 25 USC §1603.

Accessibility of Insurance in Rural and Remote Areas.

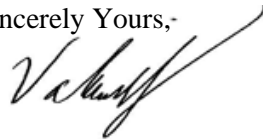
Insurance regulation is generally outside our specific area of expertise. We do, however, want to make a general comment of concern about the availability of insurance in rural and remote areas where the majority of Tribes are located. We are not in the position to assess whether the proposed rules will improve access in these locations or not, but we admit to a measure of concern. We urge that as these and other rules are considered that ensuring meaningful and competitive access to health insurance coverage in all locations in every state be a benchmark against which the proposed rules are measured.

Rating for Tobacco Use.

We appreciate the discussion of the methods by which health insurers may permissibly rate premiums based on tobacco use and how “tobacco use” should be defined and information about it collected from applicants for insurance.⁴ We share the concern about the absence of a uniform definition of “tobacco use.” We also agree that the definition should be consistent with how the term may be applied for the purposes of sections 2701 and 2705(j) of the Public Health Service (PHS) Act and appreciate the opportunity to comment on the definition. We note that a number of options are suggested: self-reported, defined amounts of use during a set-period, regular use as opposed to infrequent or sporadic, or based on addiction. Whichever definition is used, we believe it is important that it include an express exemption for religious and ceremonial use of tobacco. In many American Indian cultures, tobacco is used for religious and ceremonial purposes. Such uses should not trigger a higher rating. Moreover, whether the single streamlined application is used to capture the data about tobacco use, or some other vehicle is used, it is important that the person filling out the form be given the information that such uses are not included in the definition of “tobacco use,” otherwise the applicant may erroneously be determined to be a tobacco user when it is used solely for religious or ceremonial purposes.

Thank you again for providing an opportunity to comment on these proposed rules. Please contact Valerie Davidson at vdavidson@anthc.org, if you would like to discuss the issues addressed in this comment or other issues regarding their application to or effect on American Indians or Alaska Natives.

Sincerely Yours,-



Valerie Davidson
Chair, CMS Tribal Technical Advisory Group

Cc: Gary Cohen, Deputy Administrator CMS and Director CCIIO
Pete Nakahata, CCIIO
Kitty Marx, Director, CMS Tribal Affairs Group
Dr. Yvette Roubideaux, Director, Indian Health

⁴ 77 Federal Register 70595-97.