

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

April 10, 2012

Ms. Marilyn Tavenner
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Hubert Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Dear Ms. Tavenner,

The Tribal Technical Advisory Group (TTAG)¹ to the Centers for Medicare and Medicaid Services (CMS) has a long standing interest in identifying, analyzing and improving the data within the CMS on services provided to American Indians and Alaska Natives (AI/ANs) through the various CMS-administered programs. A review of the TTAG strategic plan provides a good foundation for understanding the data work that has been done over the past five years under direction of the TTAG. Much of this work has been accomplished through an Inter-Departmental Development Agreement (IDDA) between the Indian Health Service (IHS), Department of Health and Human Services (HHS) and the National Indian Health Board (NIHB)² on behalf of the CMS. The California Rural Indian Health Board (CRIHB) is the subcontractor to NIHB for the data-related work supported by the IDDA. This TTAG directed work has focused on unique aspects of our population including their access to CMS-funded coverage and their access to IHS and non-IHS sources of care and the data systems that document that care.

Today, I must to raise significant and increasingly urgent concerns related to the implementation of the National Data Hub by the CMS. These issues were prominently raised by TTAG representatives at the February face-to-face meeting in Washington, DC. Since then, the release of the final rule on the “Establishment of Exchanges and Qualified Health Plans” (CMS-

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 Established 40 years ago, NIHB is an inter-Tribal organization that advocates on behalf of Tribal governments for the provision of quality health care to all American Indians and Alaska Natives. NIHB is governed by a Board of Directors consisting of a representative from each of the twelve Indian Health Service (IHS) Areas.

9989-F; Final Rule)³ adds further urgency to our concerns and the need for a consistent response from your agency.

The establishment of a near real-time application and eligibility verification process for all CMS-related coverage will be a significant accomplishment of the Affordable Care Act.⁴ One part of that process will need to address in sequenced way the special benefits available for individual AI/ANs under the Children’s Health Insurance Program, the Medicaid Program, and coverage secured in the individual market through the to-be-established health insurance exchanges (Exchange). This will necessitate that the application process query applicants for their status as an AI/AN under specific definitions taken from the Act.

We are very concerned about how these various definitions will be made operational within a new electronic eligibility system called for under § 155.350(c)(2) of the Final Rule.⁵ As one source of verification of Indian status, we encourage the appropriate use of the existing database maintained electronically by the Indian Health Service. As required under the Final Rule, we believe this data set to be “sufficiently accurate”, and an electronic data match using these data will provide “less administrative complexity than paper verification.”

However, we are concerned that the stated intention (on page 277 in the preamble to the Final Rule) “to work with States and Tribes” when determining whether and how electronic data can support the verification process for Indian status ignores the appropriate role and expertise of the TTAG.

I believe the history of the past few years demonstrates that development of CMS policy on issues of particular concern to Indian Tribes and AI/ANs is best facilitated by early and open collaboration with the TTAG. Recent events suggest that this collaboration may be less vibrant than it once was as demonstrated by the fact that more than one meeting between CMS data systems staff and IHS data systems staff has been held – without the engagement of the TTAG or the inclusion of the experts in Indian data issues that are under contract with the CMS through the IDDA – to discuss these issues including threshold questions concerning the utility of the IHS beneficiary data set. This raises the fear on our part that significant decisions will have been made prior to any collaboration with Tribes, States, or the TTAG. I therefore urge you to

³ http://www.ofr.gov/OFRUpload/OFRData/2012-06125_PI.pdf

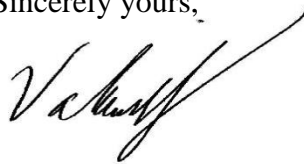
⁴ Refers collectively to the Patient Protection and Affordable Care Act (Pub. L. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152), and referred to herein as the Affordable Care Act or ACA. Section 36B, contained in section 1401 of the ACA, and was subsequently amended by the Medicare and Medicaid Extenders Act of 2010 (Pub. L. 111-309), the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011 (Pub. L. 112-9), and the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112-10).

⁵ § 155.350(c) reads, in part: “To the extent that an applicant attests that he or she is an Indian, the Exchange must verify such attestation by –... (2) Relying on any electronic data sources that are available to the Exchange and which have been approved by HHS for this purpose, based on evidence showing that such data sources are sufficiently accurate and offer less administrative complexity than paper verification...”

direct your staff to include representatives from the Tribal Technical Advisory Group to be present and participate in these now ongoing discussions. Appropriate participation from TTAG would include the Chairperson of the Data Committee and the Project Director of the TTAG Data Research Project which is funded through the IDAA. It is perhaps only an oversight that to date they have not been included in these initial discussions despite the fact that they are, in effect, funded by you to participate in just such deliberations (see attachment). Thank you for your attention to our concerns.

In closing, I congratulate you on your nomination to serve as the Administrator of the CMS at what may be the most important time in the history of the agency. I look forward to your response to this request and to your future participation in the deliberations of the Tribal Technical Advisory Group to the CMS.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Valerie Davidson', with a long, sweeping flourish extending to the right.

Valerie Davidson
Chair, CMS Tribal Technical Advisory Group

Cc: Dr. Yvette Roubideaux, Director, Indian Health Service
Kitty Marx, Director, CMS Tribal Affairs Group

NIHB /CRIHB Contract Scope of Work section 5.

Task 5. Propose and analyze approaches necessary to change and augment data collection systems and other information needed to support all reporting required under the Affordable Care Act (“ACA”), Children’s Health Insurance Program Reauthorization Act (“CHIPRA”) and American Recovery and Reinvestment Act (“ARRA”), and propose reporting mechanisms and protocols for such reporting.

Task 5.1. Use the most recent legislative and policy analyses by the NIHB of ACA, CHIPRA and ARRA legal and regulatory codes, including proposed and approved regulations, to assess systematically the CMS reporting required for AI/AN.

Task 5.2. Determine from the refined assessments of current Medicare and Medicaid/CHIP data collection systems performed above for Tasks 1 to Task 4 the augmentation in the data collection systems and other information needed to support the required AI/AN reporting.

Task 5.3. Propose and analyze CMS reporting mechanisms and protocols needed to change and augment data collection systems and other information needed to support all reporting required for AI/AN.