

# 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

March 19, 2009

Ms. Charlene Frizzera  
Acting Administrator  
Centers for Medicare & Medicaid Services  
Hubert H. Humphrey Building  
200 Independence Avenue S.W.  
Washington, DC 20201

Dear Acting Administrator Frizzera:

The CMS Tribal Technical Advisory Group (TTAG) is in receipt of your letter dated January 16, 2009, in which you respond to the TTAG's recommendation that CMS conduct a national Tribal consultation on the Medicaid Administrative Match (MAM) program.<sup>1</sup> While the TTAG is disappointed to learn that you have decided not to take our advice and guidance on this issue, we are equally disappointed that CMS may not completely understand the role of the TTAG.

Your letter indicates that the TTAG is the appropriate forum in which to address the Tribal MAM issues, rather than conducting a separate Tribal consultation as the TTAG recommends. Your letter further states that, any discussion toward developing a comprehensive Tribal MAM policy should occur within the existing TTAG structure, as the advisory group was expressly designed to facilitate such a discussion.

While I understand that CMS would prefer to utilize the TTAG to address Tribal consultation issues associated with the MAM program—as well as others—that is not the role of the TTAG. The purpose of the TTAG is not to supplant the requirements of the President's Executive Order 13175 on Tribal Consultation or the Department of Health and Human Service (HHS) Tribal Consultation Policy, but rather to serve as an advisory to CMS on policy issues affecting American Indian and Alaska Natives served by CMS programs. The TTAG must be very careful to make sure it is not used as a venue to supplant Tribal consultation.

The TTAG letter to Mr. Weems explained that Tribes nationally do not agree on the compliance requirements of participating in the MAM program. The TTAG did serve as a venue for Tribes and CMS to try to reach a compromise on these issues, and based on these discussions, fulfilled its role to provide CMS with its advice on how to proceed and address this issue. Our October 15<sup>th</sup> letter to Mr. Weems very clearly explained that since Tribes do not agree on the MAM issues nationally and that CMS continues to approve Tribal MAM plans in some states, and then use the basis of these approvals to justify changes in other states—places a significant compliance costs on Tribes nationally. This

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<sup>1</sup> Valerie Davidson letter to Kerry Weems dated October 15, 2008.

is the very issue in which Executive Order 13175 was intended to address. Thus, our recommendation for CMS to conduct a national Tribal consultation follows the requirements of the Executive Order and is in accordance with the HHS Tribal Consultation Policy.

Since CMS does not have an approved Tribal consultation policy, it stands to reason that it should fall under the requirements of the HHS policy. In order to avoid this confusion in the future, the TTAG urges CMS to move forward and adopt its Tribal consultation policy that we have worked on over the last three years as soon as possible.

We also reiterate that the TTAG is not a forum for CMS to conduct Tribal consultation, but rather an advisory body to provide CMS with advice and guidance on issues affecting American Indian and Alaska Natives served by Medicare, Medicaid, and SCHIP programs with includes advising CMS when a national Tribal consultation is needed. As such, the TTAG stands by its recommendation for CMS to conduct a national Tribal consultation on the issues outlined in our October 15, 2008 letter to Mr. Weems to occur as soon as possible.

Sincerely,

/s/

Valarie Davidson  
Chair

cc: Kitty Marx, Director, Tribal Affairs Group, CMS