

Tribal Technical Advisory Group

To the Centers for Medicare & Medicaid Services

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February 25, 2009

Ms. Charlene Frizzera
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Re: Implementation of Tribal Enrollment Documentation as Proof of Citizenship for Medicaid and CHIP Eligibility

Dear Acting Administrator Frizzera:

On February 4, 2009, President Obama signed into law, the Children's Health Insurance Reauthorization Act of 2009, which became Public Law 111-3, 123 Stat. 8. Included in the legislation was a new definition of eligibility for Federally Recognized Indian Tribes for Medicaid and SCHIP that stated:

“(1) ACCEPTANCE OF DOCUMENTARY EVIDENCE ISSUED BY A FEDERALLY RECOGNIZED TRIBE. Section 1903(x)(3)(B)(42 U.S.C. 1396b(x)(3)(B)) is amended-

(A) By redesignating clause (v) as clause (vi); and

(B) By inserting after clause (iv), the following new clause:

“(v)(I) Except as provided in subclause (II), a document issued by a federally recognized Indian tribe evidencing membership or enrollment in, or affiliation with, such tribe (such as a tribal enrollment card or certificate of Indian blood).

(3) SPECIAL TRANSITION RULE FOR INDIANS.-During the period that begins on July 1, 2006, and ends on the effective date of final regulations issued under subclause(II) of section 1903 (x)(3)(B)(v) of the Social Security Act (42 U.S.C. 1396b(x)(3)(B)(v)) (as added by subsection (b)(1)(B), an individual who is a member of a federally-recognized Indian tribe described in subclause (II) of that section who presents a document described in subclause (I) of such section that is issued by such Indian tribe, shall be deemed to have presented satisfactory evidence of citizenship or nationality for purposes of satisfying the requirement of subsection (x) of section 1903 of such Act.

(Subtitle B, Sec. 211(b)(1)-(3))

The Tribal Technical Advisory Group (TTAG) seeks to provide advice regarding the guidance and rulemaking regarding this rule.

The (TTAG) regularly provides advice regarding issues impacting American Indians and Alaska Natives. Our advisory group includes committees that address significant CMS activities that impact American Indians and Alaska Natives. Our committee on Citizenship Documentation was active in providing advice to CMS regarding the Citizenship issues that arose after the 2005 Deficit Reduction Act was enacted. The DRA had a devastating impact to many of our Tribal Elders who lived in rural areas and were not born in hospitals. These elders could not produce birth certificates but could provide tribal membership documents and certificates of Indian blood. However, these documents were never recognized by the CMS as proof of eligibility for citizenship on a reasonable tier level. Given our understanding of the issues we make the following recommendations:

The Acting Director should issue Interim guidelines to the State Medicaid Directors directing them to: (1) cooperate in implementing the new citizenship documentation law that recognizes Tribal Enrollment documentation for proof of Medicaid eligibility and (2) seek implementation of retroactive payment to Medicaid providers and individual payers.

Interim guidance will provide the State Directors with guidance on how to implement the eligibility criteria announced in the new SCHIP law. The interim guidance should provide that Enrollment Documentation provides proof of eligibility for Medicaid and SCHIP. Most Tribes have an arduous enrollment processes that provide ample evidence of identity and citizenship. In fact, it is one of the most scrutinized of internal Tribal powers to define enrollment for each sovereign nation. Institutionally, many Tribes have highly developed formal processes that provide reliable determinations of tribal enrollment

The new law requires that members of Federally recognized Indian Tribes who provided proof of citizenship from July 1, 2006, as described in the new legislation, will have presented satisfactory evidence of citizenship or nationality. This provision has a retroactive effect, which requires the State Medicaid Directors to make payments for Medicaid coverage. We encourage the State Medicaid directors to make both payments to the unpaid Medicaid providers and to those individuals who paid for their own services.

Thank you for your time and deepest consideration of the Tribal Technical Advisory Group Subcommittee on Citizenship documentation recommendations.

Respectfully,

/s/

Valerie Davidson
Chairman