

October 4, 2004

Dr. Mark McClellan, Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue, S.W.
Humphrey Building
Washington, DC 20201

Re: Adverse Impact of the MMA's Dual Eligible Provisions on the Indian Health Care System

Dear Dr. McClellan:

On behalf of the Tribal Technical Advisory Group (TTAG), I wrote to you in July 2004, regarding concerns we have about potential negative impact on the Indian health care system of provisions contained in the Medicare Modernization Act (MMA). Subsequently, in evaluating the Act and the proposed regulations to implement Parts C and D, the TTAG has identified a significant adverse impact of lost Medicaid revenue to the Indian health care system, or I/T/U, estimated to be between \$25-50 million effective January 1, 2006, with the roll out of provisions of the Act that affect the so-called "dual eligible" Medicare/Medicaid enrollee.

On January 1, 2006, I/T/U pharmacies will lose the ability to collect from state Medicaid program payments for drugs for dual eligible enrollees who will then have to enroll in a private sector Medicare drug benefit plan as the Medicaid drug coverage they previously enjoyed will be precluded by the MMA. This will result in an immediate loss to the I/T/U of \$25-50 million Medicaid revenue which will not soon be recovered, or even recovered in whole at some later date, with the roll out of Part C and D Medicare plans. This lost revenue to the I/T/U, which supplements an already under-funded Indian health care system, will undoubtedly exacerbate the well known health disparities that already exist between American Indians/Alaska Natives (AI/AN) and the general U.S. population (reference is made to the recently released report by the U.S. Commission on Civil Rights entitled, "Broken Promises: Evaluating the Native American Health Care System.")

Our evaluation of the proposed regulations for Parts C and D raises the concern that if private sector plans are not required to engage with I/T/U's, through either network or out-of-network arrangements, the bulk of the lost Medicaid revenue to the I/T/U's on January 1, 2006, will never be recovered under the MMA, and the Indian health care system will sustain a damaging set back. Congress recognized in 1976, the shortcomings of funding to the Indian health care system and legislated access to Medicare and Medicaid benefits for all eligible AI/AN's, and to the Indian Health Service and Tribal programs that serve them. We do not believe the implementation of the new MMA provisions are intended to do harm to these already grossly under-funded Indian programs.

As the Administrator for the federal agency charged with the implementation of the MMA, we bring this serious matter to your attention as members of the TTAG charged with advising CMS on issues affecting Indian country. It remains our concern that, short of a new "legislative fix", the Indian health care system will suffer an adverse impact as a result of the roll out of MMA programs that affect the status of dual eligibles unless this can be corrected in the current regulatory process.

We thank you for your attention to this critical issue and your continuing leadership and cooperation on Medicare and Medicaid matters that impact Indian country.

Sincerely,

A handwritten signature in black ink, appearing to read "Valerie Davidson". The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Valerie Davidson
Chair, CMS TTAG
Executive Vice-President,
Yukon-Kuskokwim Health Corporation

cc: Dorothy Dupree
TTAG Members