

Tribal Technical Advisory Group

To the Centers for Medicare & Medicaid Services

c/o National Indian Health Board 910 Pennsylvania Avenue, SE Washington, DC 20003 (202) 507-4070 (202) 507-4071 fax

The Honorable Alex M. Azar II, Secretary
Department of Health and Human Services
200 Independence Avenue SW
Washington, D.C. 20201

Re: Comments on HHS Proposed Regulation "Securing Updated and Necessary Statutory Evaluations Timely," RIN 0991-AC24 [Docket No. HHS-OS-2020-0012]

Dear Secretary Azar,

On behalf of the Tribal Technical Advisory Group, I write to express our strong opposition to the Department of Health and Human Services ("HHS") proposed rule "Securing Updated and Necessary Statutory Evaluations Timely (SUNSET)" (RIN 0991-AC24). This rule would threaten to eliminate thousands of HHS regulations needed for the continued operation of the Indian health service, Medicare, Medicaid and other programs. We urge the Department to rethink this proposal and rescind the Proposed Rule.

The TTAG is deeply disappointed that the Department failed to notify, let alone consult with Tribes about this wide reaching deregulatory initiative, even as it met with the TTAG and tribal leaders last month. This is a blatant disregard of the government's duty to consult with Tribes under Executive Order 13175 and the Department's own tribal consultation policy.

The Proposed Rule provides that all of the Department's health care regulations in Chapters 42 and 45 of the federal regulations shall automatically expire at the end of:

- (i) Two calendar years after the year that this section first becomes effective;
- (ii) Ten calendar years after the year of the Regulation's promulgation; or
- (iii) Ten calendar years after the last year in which the Department assessed and (if review of the Regulation is required pursuant to paragraph (d)) reviewed the Regulation, whichever is latest.

While there are exceptions for certain regulations, the vast majority of the Department's regulations implementing Medicaid, Medicare and the Indian health system would have to be assessed by the Department in order to remain in effect. We are concerned that the assessment process will impose such a burden on the Department that many regulations would likely expire simply because the Department could not devote the resources necessary to conduct the required assessment. At a minimum, this rule would create significant confusion regarding some of the most critically important regulations for the Indian health system, causing serious uncertainty to a system already strained by COVID-19 response and decades of chronic underfunding.

The Indian health system relies on a number of regulations it has worked for decades with the Department to promulgate on a government-to-government basis. These include the regulations governing the Indian health service, Tribal Self-Governance, and Indian specific provisions in the Medicaid, Medicare CHIP and Marketplace regulations. While some of these regulations are mandated by law and would be exempt, others may not be. If implemented, the Proposed Rule would threaten the regulatory underpinnings of the Indian health system and completely disrupt its ability to fulfill its mission to provide care to American Indians and Alaska Natives.

We firmly believe the Department does not have the legal authority to promulgate the rule. While it claims to implement a section of the Regulatory Flexibility Act, 5 U.S.C. 610(a), all that provision does is call for agency to undertake a periodic review of its regulations. It does not authorize HHS to impose arbitrary time limits on the useful life of all of its regulations.

We urge the Department to reconsider this ill-advised initiative and rescind the proposed rule.

Sincerely,

A handwritten signature in black ink that reads "W. Ron Allen". The signature is written in a cursive style with a large, sweeping initial "W".

W. Ron Allen, Chair, CMS/TTAG
Jamestown S'Klallam Tribal Chair/CEO