

# 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

June 9, 2022

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
7500 Security Boulevard  
Baltimore, MD 21244

*Submitted via regulations.gov*

**Re: Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Quality Reporting Program and Value-Based Purchasing Program; Long-Term Care Facilities to Establish Mandatory Minimum Staffing Levels**

Dear Dr. Brooks-LaSure:

On behalf of the CMS Tribal Technical Advisory Group (TTAG), I write to provide a response to the Centers for Medicare and Medicaid Services' (CMS) Proposed Rule, "Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2023; Request for Information on Revising the Requirements for Long-Term Care Facilities To Establish Mandatory Minimum Staffing Levels" (CMS-1765-P). While we are supportive of the overall goal of establishing mandatory minimum staffing levels in long-term care (LTC) facilities, we would like to remind CMS of the unique nature of the Indian healthcare system and the additional challenges related to the rurality of many Tribal facilities that could complicate compliance with this rule.

We fully support CMS' intention to implement staffing mandates to address concerns about adequate staffing and care in LTC facilities or to potentially require that a registered nurse (RN) be on site for more hours than currently required – potentially 24/7. However, we are concerned that rural areas may struggle to comply due to the many challenges they face in recruiting and retaining staff. A requirement for additional RN staffing is especially difficult to meet, given the increased education and training required of an RN. While the Health Resources and Services Administration (HRSA) has reported an increase in RNs that would outpace demand, Indian Country faces additional challenges to recruitment and retention, such as limited housing, financial resources, and training capabilities. The shortage of RNs nationally has dramatically increased the cost of hiring RNs in Tribal LTC facilities, either as direct hires or through locum tenens or other arrangements.

We recommend that CMS consider the unique challenges of LTC facilities in Indian Country and increase its efforts to first increase funding to IHS and Tribal facilities so that they have the resources to increase their staffing. An essential component of a comprehensive approach to health equity is recognizing that different populations have different needs, and therefore flexibility is

## **CMS TTAG Letter to CMS Administrator Brooks-LaSure**

**Re: CMS-1765-P**

**June 9, 2022**

**Page 2 of 3**

needed to ensure that groups facing inequities are not further harmed by sweeping rules lacking necessary nuance. Rules that are effective in one region, or even in most of the United States, may be instead detrimental to the delivery of health care in Indian Country. Rules that may be necessary to ensure adequate staffing for-profit LTC facilities may not be workable or necessary for Tribal LTC facilities, who do not have a profit incentive to reduce their costs by reducing staffing. Rather, Tribal LTC facilities seek to increase staffing and access to resources for the Tribal members they serve in their communities. The IHS does not provide funding for Tribal LTC facilities, even though the IHS was specifically authorized to provide long term care in amendments to the Indian Health Care Improvement Act (IHCIA) enacted as part of the Affordable Care Act (ACA). Tribes are required to fund their LTC programs through third party reimbursements and Tribal funds, if available. If HHS is going to mandate additional staffing for Tribal LTC facilities, it must first provide the funding needed for them to hire additional staffing.

Maintaining a stable clinical workforce capable of providing quality and timely care is critical for IHS to ensure that comprehensive health services are available and accessible to American Indian and Alaska Native (AI/AN) people.<sup>1</sup> Chronic underfunding of the Indian health system has contributed to significant vacancy rates for clinical care providers. The pandemic has further strained our healthcare system and has significantly impacted the workforce in many rural and underserved communities, which often include AI/AN reservations and communities. Unfortunately, the Indian health system faces considerable challenges to overcome its long-standing struggle to fill vacancies despite our continued efforts to recruit and retain providers in underserved areas.

Much of Indian Country is rural. In fact, 46.1 percent of AI/ANs live in rural communities, a rate which is more than twice that of the overall U.S. population.<sup>2</sup> The ongoing physician workforce shortage has disproportionately impacted the ability of AI/ANs to access quality health care. Health systems all over the country, including those operated by the IHS, Tribes, and Tribal organizations, are in desperate need of additional providers. We encourage CMS to continue to develop ways to increase the recruitment and retention of providers – such as RNs – in Indian Country. We encourage CMS to continue to engage the TTAG Long-Term Services and Supports (LTSS) Subcommittee in developing methods to support RN recruitment and retention in Indian Country.

Our elders deserve the high-level care that RNs provide in LTC facilities, and we urge CMS to continue this important work. If a mandatory minimum staffing requirement is implemented without the necessary support, our IHS and Tribal facilities will suffer. The facilities most in need of additional support and resources will be penalized, further perpetuating the inequity these facilities face in staffing.

---

<sup>1</sup> GAO Report to Congressional Requesters, “IHS: Agency Faces Ongoing Challenges Filling Provider Vacancies,” Aug. 2018, <https://www.gao.gov/assets/gao-18-580.pdf>.

<sup>2</sup> Janice C. Probst, Fozia Ajmal, “Social Determinants of Health among Rural American Indian and Alaska Native Populations,” Univ. of S.C. Rural and Minority Health Research Center, July 2019 [https://www.sc.edu/study/colleges\\_schools/public\\_health/research/research\\_centers/sc\\_rural\\_health\\_research\\_center/documents/socialdeterminantsofhealthamongruralamericanindianandalaskanativepopulations.pdf](https://www.sc.edu/study/colleges_schools/public_health/research/research_centers/sc_rural_health_research_center/documents/socialdeterminantsofhealthamongruralamericanindianandalaskanativepopulations.pdf).

**CMS TTAG Letter to CMS Administrator Brooks-LaSure**

**Re: CMS-1765-P**

**June 9, 2022**

**Page 3 of 3**

**Conclusion**

While we are supportive of the overall goal of establishing mandatory minimum staffing levels in LTC facilities in order to improve the care provided to our elders, we want to urge CMS to consider providing additional support to ensure that our facilities can meet these requirements. Provider recruitment and retention remains a challenge in Indian Country, and we encourage CMS to continue its work to develop methods to promote provider engagement with our communities. We appreciate your consideration of the above comments and recommendations and look forward to engaging with the agency further.

Sincerely,

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

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