



# 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

October 17, 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

*Sent via email*

**Re: Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2023 Rates; Quality Programs and Medicare Promoting Interoperability Program Requirements for Eligible Hospitals and Critical Access Hospitals; Costs Incurred for Qualified and Non-qualified Deferred Compensation Plans; and Changes to Hospital and Critical Access Hospital Conditions of Participation**

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) final rule, “Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2023 Rates; Quality Programs and Medicare Promoting Interoperability Program Requirements for Eligible Hospitals and Critical Access Hospitals; Costs Incurred for Qualified and Non-qualified Deferred Compensation Plans; and Changes to Hospital and Critical Access Hospital Conditions of Participation” (CMS-1771-F).”

While we appreciate that CMS recognizes the importance of the supplemental payment to our facilities, we are very concerned about the decision to allow the low volume payment to expire. This decision will substantially reduce facility funding and will severely impact quality of care.

### ***Supplemental Payment***

We appreciate that the Agency recognized the importance of the supplemental payment for Indian Health Service (IHS) and Tribal (I/T) hospitals for FY 2023. We appreciate the recognition that this need is a result of the unique challenges we face with respect to uncompensated care due to structural differences in health care delivery and financing compared to the rest of the country. Based on analysis conducted by the IHS, we are

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confident that this new permanent supplemental payment will mitigate the anticipated impact on I/T hospitals due to the discontinuance of the previous methodology for calculating uncompensated care costs. We are hopeful that this supplemental payment will mitigate the undue long-term financial disruption that would have occurred.

***Low-Volume Adjustment***

We are disappointed by the Agency's decision to allow the low-volume payment to expire. This decision to lower the threshold back to what it was back when the statute was enacted will have a significant impact on our facilities.

Of the 21 facilities that received low-volume payments in 2021, based on the new rule, 90 percent of those IHS and Tribal facilities will lose their low-volume payment in FY2023. If all facilities from 2021 are included, including the Critical Access Hospitals (CAHs) to state, 92 percent will lose their low-volume payments in 2023 because of this Final Rule. Three of these sites are funded at less than 36 percent of their level of need based on the IHS's federal disparity index; and collectively, six of these sites are funded at less than the national average level of need for IHS, which is 48.6 percent. While this cut will have a harmful impact on all facilities, the reduction will have a more significant impact on those health facilities that have low federal disparity index scores, reducing their ability to provide care.<sup>1</sup>

This is estimated to cause a \$11.5 million reduction in payment for Indian country. As we stated in our comment on the Proposed Rule, these losses will significantly impact the care provided to our people by an already chronically underfunded Indian health care system. We ask the Agency to do everything within its power to reinstate this low-volume payment.

We look forward to engaging with the agency further on similar issues pertaining to the unique I/T system and working to ensure it is appropriately funded and able to offer the best possible care to our American Indian and Alaska Native people.

Sincerely,



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

Cc: *Kitty Marx*

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<sup>1</sup> The federal disparity index (FDI) is the level of per capita funding for a specific locale, compared with the National Health Expenditure benchmark, or funds spent on the "average" American. See Indian Health Service, Indian Health Care Improvement Fund Workgroup – Interim Report (June 2018), available at: [https://www.ihs.gov/sites/ihcif/themes/responsive2017/display\\_objects/documents/2018/2018\\_IHCIF\\_WorkgroupInterimReport.pdf](https://www.ihs.gov/sites/ihcif/themes/responsive2017/display_objects/documents/2018/2018_IHCIF_WorkgroupInterimReport.pdf).