Tribal Technical Advisory Group

To the Centers for Medicare & Medicaid Services

c/o National Indian Health Board | 50 F Street NW | Washington, DC 20001 | (202) 507-4070 | (202) 507-4071 fax

April 3, 2024

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 to: Chiquita.Brooks-Lasure@cms.hhs.gov

Re: Follow Up from the March 2024 Centers for Medicare and Medicaid Services Tribal Technical Advisory Group Face-to-Face Meeting

Dear Administrator Brooks-LaSure:

On behalf of the Centers for Medicare and Medicaid Services (CMS) Tribal Technical Advisory Group (TTAG), I would like to express our deep gratitude and appreciation for your continued commitment to the top concerns of Indian Country. I have included some of the key issues raised during the March 2024 TTAG Face-to-Face Meeting and look forward to working with you and the rest of CMS to accomplish these health priorities for Indian Country.

I. Four Walls Issue

We appreciate the partnership with CMS on several issues, most notably the four walls issue. We are excited about the opportunity this regulatory fix provides, Mr. Daniel Tsai shared that **the Centers for Medicare and Medicaid Services (CMS) is looking into formally amending the clinic regulations to require the reimbursement of Medicaid clinic services provided outside the four walls of a Tribal clinic.** CMS is looking to make reimbursement for such services mandatory for Tribal clinics, and optional for behavioral health clinics and rural health providers. It is reasoned that Tribal clinics can be made mandatory because of the 100% FMAP for AI/AN beneficiaries while the other clinic types would essentially be an unfunded mandate if made mandatory as well.

The inclusion of these three clinic types is based on a shared lack of access to care, transportation, infrastructure, resources, providers, etc. similar to the justification for the existing statutory exemption for houseless individuals. Recognizing that the access barriers are similar – yet different – CMS has looked to TTAG for our help in collecting as much information as possible to bolster the rationale for this amendment. We have collected this information and shared it with the Division of Tribal Affairs (DTA). If the Center for Medicaid and CHIP Services (CMCS) predicts an area that requires more justification from Tribes in their comments on the proposed regulation, we ask that the

office communicates this to us ahead of the comment deadline so we can ensure we appropriately address the unique impact of this policy change on Indian Country.

II. Reimbursement Framework for Traditional Healing

The draft framework for approving 1115(a) demonstration waivers with traditional healing that was shared at the March Face-to-Face Meeting lacks essential details that Tribes need to meaningfully engage with this critical issue. The content CMS has provided to Tribes on the draft framework's specifics so far only includes four slides with bullet-pointed information and verbal information provided at the March 13, 2024, TTAG Waiver Subcommittee Meeting. This background information was not shared widely in CMS' notice of the framework's April 3, 2024 G2G consultation. There was no Dear Tribal Leader Letter shared to notify Tribes of this consultation. **CMS has not provided sufficient or accessible background information for Tribes to facilitate meaningful consultation on the framework**. As a result, there are several concerns around the draft framework.

Tribes must have the opportunity to consult on a version of the framework with complete draft language across each component before it can be finalized. An area that especially requires clarity involves eligible traditional health care practices. **CMS must make concrete commitments that (1) the framework will be flexible enough to support the plurality of sovereign approaches each Tribe has to their traditional medicines, (2) eligible services will include services provided outside of the four walls of the clinic, and (3) eligible services w**ill **extend beyond just "practices that are actively delivered by IHS or Tribal facilities."**

Timing is another top concern around this issue. As TTAG members at the Face-to-Face Meeting shared, the four waivers with traditional healing components pending approval from CMS have been waiting for a considerable amount of time. We are disappointed that Arizona's 1115 demonstration waiver was not approved by the end of 2023, although CMS leadership continued to affirm this timeline to the TTAG and to the HHS Secretary's Tribal Advisory Committee last year.

CMS leadership has since shared that in the "sequencing" of CMS actions, this draft framework will be prioritized only after the four walls rulemaking process has wrapped up. Considering the length of time it will take to complete the four walls rulemaking process and finalize this framework, there is significant concern that the pending waivers will not be approved before the end of 2024. **This draft framework should have been introduced much earlier in the traditional healing 1115(a) demonstration waiver review process**.

III. White House Traditional Healing Summit

In support of traditional healing, we request that the Administration follow through on its plan to host the White House Traditional Healing Summit in 2024. We understand that the requests around traditional healing vary depending on region, service area, and Tribe, from the types of services provided to the payment structure, but we hope the

Summit will be an example of how traditional healing can promote well-being in Indian Country in communities – and for individuals – whose practices of health may extend outside of options currently available within mainstream American medical practice. We are disappointed that the planned summit for 2023 was canceled.

This is an important initiative that must be given the full attention of this Administration. It is vital that this Summit is held in 2024 before we potentially have a change in the Administration. In particular, we would like to see support from Vice President Kamala Harris on this initiative and would be honored if she could attend the Summit.

IV. 100% FMAP for Services "Received Through" IHS/Tribal Facilities

During this Face-to-Face meeting, the TTAG expressed concerns about State Medicaid offices unilaterally discussing policy options with CMS to implement Medicaid's policy for States to claim 100% FMAP for services "received through" an IHS or Tribal facility. TTAG members discussed concerns that some States are discussing policy options with CMS regional or headquarters offices to expand or implement this policy without the consultation of Tribes or Tribal health programs. There were concerns that at least one state may be reclaiming services "received through" IHS or Tribal facilities without the existence, or updated, CCAs. The TTAG discussed how the successful implementation of the "received through" FMAP policy is because of the partnership between the states, the Tribes, and CMS.

It is very important that any proposals by the states to expand or implement this policy with CMS—should not only include state Medicaid programs—but must include Tribal health programs and the involvement of the CMS Division of Tribal Affairs (DTA). Both CMCS and DTA should ensure that proposals by the states to expand or implement the "received through" policy have been addressed through Tribal consultation and with Tribes and Tribal health programs.

We respectfully request that the CMS Administrator direct the CMS regional offices and the state Medicaid leads to make sure that any policy considerations related to Tribal reclaiming under the "received through" policy has been adequately discussed and consulted with Tribal health programs in the states before approaching CMS for any advice or technical assistance to implement this policy. Tribes throughout the country have successfully implemented this policy in partnership with the states and CMS. Understanding and respecting one another's role in this process will help to ensure continued success in the implementation of this policy.

V. Consideration of Tribal Comments in Rulemaking

Despite CMS's clearly defined obligation to consult with Tribes on federal policies of impact on Indian Country, the TTAG is concerned that CMS did not engage in meaningful discussion or consult with us before rolling out the sweeping reform policy on the staffing requirements for long-term care facilities. This consultation obligation is rooted in the Constitution, federal statutes, federal regulations, Executive Orders, agency policies, and treaties. To meet these statutory requirements and constitute "meaningful" engagement, consultation must occur immediately, be carried on continuously, and should never be a mere formality.

Timely and meaningful G2G consultation with the TTAG is of the utmost importance as the TTAG is the established Tribal intermediary for all Tribal issues within Medicare and Medicaid programs. However, CMS appears to have disregarded the TTAG's detailed comments submitted in response to CMS' Request for Information last year. Our response detailed the threat these proposed standards would pose to Tribal long-term care facilities and patient care overall and underlined the need for CMS to attend to the following facts of the healthcare system in Indian Country at large.

Though the proposed rule, CMS itself acknowledges some of the challenges of rural healthcare facilities, both fail to recognize that some areas of Indian Country have no housing to shelter additional healthcare professionals, have impassable roads leading to healthcare facilities, are in communities off the road system, and have had healthcare professional shortages for decades. We hope that greater consideration will be given to all comments, feedback, and concerns provided to CMS by Tribal representatives to the TTAG.

VI. Open Invitation to Indian Country

I'd like to remind CMS leadership that they are always invited out to Indian Country to see how our programs work and to see the work we're doing in IHS, Tribal, and Urban Indian facilities to serve our people. We think it would be beneficial for you all to see the challenges we face in many of our clinics and hospitals, so you can better understand our needs and how you can help us. We're thankful that leaders Jon Blum have made the effort to visit, and we are looking forward to hosting Dan Tsai in South Dakota this spring for the National Tribal Health Conference.

Lastly, we would like to thank you again for your continued engagement with Indian Country and for your support of the TTAG's Tribal health priorities. Our Tribal leadership urges you to continue to work with Tribes and Tribal organizations to advance these priorities and to always consider the unique circumstances around the delivery of health care in our communities. We look forward to working collaboratively with the agency as we continue to advance the health and well-being of American Indian and Alaska Native people.

Sincerely,

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

Cc: Daniel Tsai*, Deputy Administrator and Director of Center for Medicaid and CHIP Services, CMS*
Meena Seshamani*, Deputy Administrator and Director of Center for Medicare, CMS*
Kitty Marx*, Director of CMCS Division of Tribal Affairs, CMS*