



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

December 2, 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 via regulations.gov

Re: Agency Information Collection Activities: Submission for OMB Review; Comment Request (CMS-10137)

Dear Administrator Brooks-LaSure:

On behalf of the Center for Medicare and Medicaid Services (CMS) Tribal Technical Advisory Group (TTAG), I write to comment on the Paperwork Reduction Act as it relates to the CMS Medicare Part D Addendum. These comments were previously submitted to CMS on September 5, 2024, and despite formal engagement with CMS, we continue to be rerouted to other forms of communication.

Comments Submitted on the Medicare Part D Addendum:

The TTAG had two main substantive policy recommendations to make with regard to the Part D Addendum. First, the TTAG requested that the scope of the Addendum be expanded beyond Part D plans so that it applies to other pharmacy plans as well. Indian Health Service, Tribal, and urban Indian organization (I/T/U) pharmacies are currently encountering all of the issues with other pharmacy plans that led to CMS requiring Part D plans to offer contracts to them using the Indian Part D Addendum. Pharmacy benefit managers, managed care companies, health plan sponsors, and insurance companies are all resisting offers to contract with I/T/U pharmacies that contain provisions that reflect federal restrictions I/T/U pharmacies operate under, as well as their circumstances. These commercial pharmacy networks are increasingly refusing to reimburse I/T/U pharmacies for otherwise covered services due to I/T/U pharmacies asserting their federal rights and restrictions. That is what these Indian Addenda like the Part D Addendum and QHP Addendum are designed to address – requiring issuers to comply with existing federal laws that apply to I/T/U providers instead of allowing them to try to force I/T/U providers to contract away their federal rights through standard network provider agreements. While some I/T/U providers have the capacity to negotiate with issuers on a case-by-case basis, many do not, and many issuers simply refuse to negotiate any provisions in their standard network provider agreements. The Part D Addendum remedies this for the Part D plans. It needs to be expanded to cover other pharmacy issuers as well.

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The TTAG's substantive revisions to the Part D plan would also have required all pharmacy plans to reimburse I/T/U providers at the rates they pay other network providers and not discount reimbursement since an I/T/U exercised its right to repackage pharmaceuticals or access pharmaceuticals using the Federal Supply Schedule or the 340B program. This is an issue with many PBMs now, who are starting to discount reimbursements to I/T/U providers because they acquire pharmaceuticals at discounted rates. This is not allowed under federal law, as Section 206 of the Indian Health Care Improvement Act requires all issuers to pay I/T/U providers at the highest rate they pay other in-network providers.

For reference, we have attached a set of redlines which reflect the substantive changes TTAG previously recommended. The TTAG recognizes that the Part D program office may not have the authority on its own to expand the scope of the Part D Addendum beyond the Part D program. That is why the TTAG is addressing these comments to the Administrator in the hope that its request can be reviewed at a higher level within the Agency with the authority to consider the TTAG's request. If it is not workable for the Part D Addendum to be expanded to cover other issuers, then the TTAG requests that HHS develop a new Addendum that would cover all other issuers.

We appreciate your consideration of the above comments and recommendations and look forward to engaging with your agency further.

Sincerely,

A handwritten signature in black ink that reads "W. Ron Allen". The signature is fluid and cursive, with the first name "W." and last name "Allen" clearly distinguishable.

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