



# 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

*Submitted via regulations.gov*

December 10, 2024

The Honorable Janet Yellen  
Secretary of the Treasury  
Department of the Treasury  
1500 Pennsylvania Avenue NW  
Washington, DC 20220

### **Re: Tribal General Welfare Benefits**

Dear Secretary Yellen:

On behalf of the Centers for Medicare and Medicaid Services (CMS) Tribal Technical Advisory Group (TTAG), I write to provide a response to the Department of Treasury, Internal Revenue Service (IRS) proposed rule containing proposed amendments to the Income Tax Regulations (26 CFR part 1) to implement section 139E of the Internal Revenue Code that excludes from American Indian and Alaska Natives' gross income the value of any Tribal General Welfare Benefit (TGWB). While the proposed rule is well intended, it too narrowly interprets the existing statutory exemption for *Indian health care benefits* under 26 U.S.C. § 139D.

Section 139D defines the term 'qualified Indian health care benefit' to mean:

- 1) Any health service or benefit provided or purchased, directly or indirectly, by the Indian Health Service (IHS) through a grant to, or contract or compact with, an Indian tribe or tribal organization, or through a third-party program funded by the IHS;
- 2) Medical care provided or purchased by, or amounts to reimburse for medical care provided by, an Indian tribe or tribal organization for, or to, a member of an Indian tribe, including a spouse or dependent of the citizen;
- 3) Coverage under accident or health insurance (or an arrangement having the effect of accident or health insurance), or an accident or health plan, provided by an Indian tribe or tribal organization for medical care to a member of an Indian tribe, including a spouse or dependent of the member, and;
- 4) Any other medical care provided by an Indian tribe or tribal organization that supplements, replaces, or substitutes for a program or service relating to medical care provided by the Federal government to Indian tribes or their members.

Under this existing statute, any health care benefit provided by IHS, Tribes, Tribal organizations, or other care to supplement, replace, or substitute for care the federal government provides to Tribes or their citizens, including an accident or health insurance plan, even when that health care benefit is funded by an Indian Self-Determination and Education Assistance Act (ISDEAA) contract or compact, would qualify for exclusion from the recipient's gross income. This statutory

language is quite broad, and therefore would include all health care benefits provided to Tribal citizens and further to their non-Tribal spouses and dependents.

The proposed rule inappropriately limits exemptions under section 139D to ‘medical care’ when the statute also references ‘any health service or benefit’ and ‘coverage’ provided by IHS, Tribes, Tribal organizations, or third-party program funded by IHS and through ISDEAA. Many Tribes provide all manner of health care services and benefits through their ISDEAA agreements that do not meet the IRC’s definition of “medical care.” Section 139D specifically exempts health care services and benefits that do not meet the definition of medical care so long as they are provided in an ISDEAA agreement.

So, while we appreciate the Department and IRS’s proposal to ensure that a health care benefit could qualify as exempt under Section 139E if it does not qualify under Section 139D, we want to ensure that the Department does not limit the Section 139D exclusion to only “medical care” when the statutory exemption is broader than that.

The intentionally broad language of section 139D has benefitted from the unique programming offered by IHS, Tribes, and Tribal organizations to promote the health and well-being of AI/AN people through services such as community health representatives, nutrition, education, and outreach.

The impact of the TGWB is most strongly felt as part of the determination for Medicaid eligibility because of the use of various income determination schemes across Medicaid healthcare coverage. When TGWBs are not appropriately excluded from income calculations, this can result in Tribal citizens who are rightly eligible for Medicaid to be excluded from access to these programs due to wrongful calculation of income which should otherwise be excluded under the Tribal General Welfare Exclusion Act of 2014 (the Act). Medicaid coverage, along with other CMS health coverage programs, are an important part of how the federal government meets its trust responsibility for Tribal health care. Not only is this evident in the exemption for these costs under section 139D, but Congress expressly called this out in 1976 when it authorized IHS and Tribal health programs to be billed and be reimbursed by Medicare and Medicaid, recognizing that these programs would help meet the federal government’s responsibilities.<sup>1</sup>

Some agencies point to the TGWB, but then narrow its intent and impact in ways that may be inappropriate for eligibility determination, or which may be further referenced by State agencies. One example of this is the Social Security Administration’s (SSA) use of the TGWB and the further narrowing of the Act’s provisions through the SSA’s definition of “Assistance Based on Need (ABON).” The SSA’s definition, more narrowly incorporating the TGWB through guidance,<sup>2</sup> is adopted by State Medicaid programs for “Traditional” Medicaid which serves the Elderly, Blind and Disabled eligibility group. When State’s use this narrower interpretation, it results in many Edlers in our Tribal communities to lose their coverage for Medicaid or home- and

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<sup>1</sup> H.R. REP. No. 94-1026, pt. III, at 21 (1976), as reprinted in 1976 U.S.C.C.A.N. 2782, 2796.

<sup>2</sup> Social Security Administration, “With you through life’s journey...Tribal General Welfare Exclusion Act of 2014,” August 2014. Publication No. 05-10608. Accessed on 10/28/2024 ([https://www.ssa.gov/people/aian/materials/pdfs/05-10608\\_Tribal%20General%20Welfare%20Exclusion%20Act%20of%202014.pdf](https://www.ssa.gov/people/aian/materials/pdfs/05-10608_Tribal%20General%20Welfare%20Exclusion%20Act%20of%202014.pdf)).

community-based waivers under 1915 of the Social Security Act. Several Tribes in the Great Lakes Region have experienced this and are working with their states to more accurately apply the TGWB exemptions. Our Tribal leaders urge the Department and the IRS to work with other federal agencies and departments to ensure that the exemptions under the TGWB are appropriately incorporated and applied to meet the intent of the Act, so it does not inadvertently reduce eligibility for critical safety net programs.

The TTAG leadership thanks the Department and IRS for its efforts to responsibly implement this important statute, and we provide these comments to support the best implementation of this rule to adhere to the benefit of Tribes and their citizens as directed under section 2(c) of the Act. We request that the Treasury/IRS consider the important distinctions between 139D and 139E, and the broad exemption 139D provides for Indian health care benefits. Further, we encourage the Department and IRS to make clear the implementation of section 139E and to work with other federal departments and agencies to ensure that it is not inappropriately narrowed causing knock-on effects for eligibility to other important safety net programs, particularly those which work in concert to meet the federal government's trust responsibilities for Tribal health care.

We look forward to the implementation of this Proposed Rule consistent with its intent to benefit all Tribes and their citizens with respect to health care.

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 visible.

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