



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

March 7, 2025

Mr. Anthony Archeval
Acting Director
Office of Civil Rights
Department of Health and Human Services
200 Independence Avenue SW
Washington, D.C. 20201

Ms. Stephanie Carlton
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Submitted via [regulations.gov](https://www.regulations.gov); consultation@hhs.gov; tribalaffairs@hhs.gov

Re: HIPAA Rule to Strengthen the Cybersecurity of Electronic Protected Health Information (90 FR 898)

Dear Acting Director Archeval and Acting Administrator Carlton:

On behalf of the CMS Tribal Technical Advisory Group (TTAG), I write to provide a response to the Office of Civil Rights (OCR) of the U.S. Department of Health and Human Services (HHS) proposed rule, HIPAA Rule to Strengthen the Cybersecurity of Electronic Protected Information (90 FR 898).

The TTAG leadership supports revising existing standards to improve the confidentiality, integrity and availability of electronic protected health information (ePHI). However, HHS must reschedule the Tribal Consultation on Proposed Modifications to HIPAA Security Rule to Strengthen Cybersecurity for Electronic Health Information that was originally scheduled for February 6, 2025, before a final rule is made. Tribal Consultation is not only required by HHS's Tribal Consultation Policy and Executive Order 13175, but it is necessary to discuss the impact the proposed rule would have on remote, rural, and urban Tribal facilities. TTAG is concerned by the timeline for Tribal facilities' implementation of this proposed rule and the expected cost for implementing and maintaining multi-factor authentication (MFA) systems.

While we understand the need for clinics to invest in improved security measures, many Tribal facilities remain woefully under-resourced and would therefore be unable to implement the proposed rule's requirements. Indeed, these constraints affect Tribal facilities' ability to comply with existing security requirements. For example, the Indian Health Service (IHS) has deployed a Health Information Technology Modernization Road map for all of the IHS and Tribal facilities to switch from the current Research and Patient Management System (RPMS) system to a more modern commercial off-the-shelf (COTS) electronic health record (EHR) system. Implementing the new COTS EHR is expected to take 5 years and will cost millions of dollars for IHS and Tribal facilities to complete. It is important to note that this timeline is an estimate and is dependent on adequate appropriations from Congress to fully support this critical IT transition.

IHS is responsible for supporting Tribal facilities still operating on RPMS to implement the new EHR because of federal trust and treaty obligations and the reality that Tribal facilities do not have abundant financial resources for implementing these IT systems. It will be challenging for Tribes to implement new security measures due to operating outdated IT, being in the process of transitioning to a new EHR and not having the funds to implement and maintain the proposed security measures. Tribes should have the opportunity to further explore these concerns in a required Tribal Consultation.

TTAG leadership recognizes that some Tribal facilities have been susceptible to cybersecurity attacks and may benefit from the rule's proposed addition of advanced controls like mandatory encryption for ePHI, MFA, and anti-malware protection, as well as more extensive risk assessments. Some Tribal facilities can afford to implement additional security measures and have already done so. However, many remote and rural clinics cannot afford additional changes in technology and may be less susceptible to cybersecurity attacks that would require such updates. As mentioned above, Tribal facilities are already struggling to transfer legacy data to the new COTS EHR system due to time, resource, and staffing constraints. Especially for remote and rural Tribal facilities, the proposed rule's expectations would be harmful and costly to their operations.

It is irresponsible to move forward with this proposed rule without holding a required Tribal Consultation to discuss barriers that Tribal facilities will ultimately face with implementing the new security measures. A Tribal Consultation will allow CMS to share the best practices, methodologies, procedures, and processes for protecting ePHI that are within the current control and means of IHS and Tribal facilities.

CONCLUSION

The TTAG leadership urges you to reschedule the Tribal Consultation at your soonest convenience and halt the current proposed rule until then. We appreciate your consideration of the above comments and recommendations and please reach out to us if you have any further questions.

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