

Tribal Technical Advisory Group

To the Centers for Medicare & Medicaid Services

c/o National Indian Health Board 1940 Duke Street, Ste. 200 Alexandria, VA 22314 (703)486-4706 (703)486-5717 fax

October 11, 2007

Secretary Michael O. Leavitt
Department of Health and Human Services
200 Independence Ave, S.W.
Washington, D.C. 20201

Dear Mr. Leavitt,

As Chair and on behalf of the Centers for Medicare and Medicaid Services Tribal Technical Advisory Group (CMS TTAG), I write to express concerns regarding your September 11, 2007 letter to Senate Finance Committee Chairman Max Baucus (D-MT). The letter contains views of the Department of Health and Human Services (HHS) on certain provisions of S. 1200, Indian Health Care Improvement Act Amendments of 2007, relating to Medicare, Medicaid, and the State Children's Health Insurance Program (SCHIP).

The CMS TTAG is extremely disappointed that the Department's views were communicated in this manner without being discussed with the TTAG.

The TTAG was established as a Federal Advisory Committee Act exemption under 2 U.S.C. 1534 to serve "as an advisory body to CMS, providing expertise on policies, guidelines, and programmatic issues affecting the delivery of health care for American Indians and Alaska Natives (AI/ANs) served by Titles XVII, XIX, and XXI of the Social Security Act or any other health care program funded (in whole or in part) by CMS." Since February 2004, the TTAG has been an effective advisory group holding monthly conference calls and three face to face meetings each year in Washington, DC. Tribal participation on the TTAG is a duty that tribal representatives from across the country take seriously. Many travel from remote areas of Indian Country, take absences from their employment, and spend time away from their homes and families to participate in this work. Our past achievements and continued mutual success depend on meaningful two-way communication.

As you are aware, the reauthorization of the Indian Health Care Improvement Act (IHCA) is a critically important piece of legislation for Indian Country. At almost every TTAG meeting, the IHCA reauthorization has been an agenda topic with CMS officials at the highest levels in attendance, including prior Administrators, the Deputy Administrator, and the Office of Legislation. Although the TTAG has been told that CMS will not discuss pending legislation, the basic Indian health policies and their impact on Medicare, Medicaid and SCHIP programs deserve the advice and input from the TTAG. We believe that as a result of the failure to consult with the TTAG, several of the Department's comments reflect a lack of understanding of the historical basis for the Medicare and Medicaid provisions in IHCA, the current operations of the

Indian health system, and the importance of these provisions to the sustainability of Indian Health Service (IHS) and Tribal programs.

Some of the Medicare, Medicaid, and SCHIP provisions of S. 1200 were developed as a result of discussions with CMS and State Medicaid programs. Although TTAG tries to resolve CMS issues administratively through policy and programmatic changes, we have frequently been told that a legislative fix is required. The following are a few examples of the HHS comments that are of concern:

- The adverse impact on AI/ANs of the Medicaid citizenship documentation requirement has been discussed several times with CMS. A recurring response has been that CMS was interpreting the law as written; any change in the law would have to come from Congress. The S. 1200 provision on this issue (developed by the Finance Committee in 2006) would change the law to alleviate the adverse impact of CMS final regulations. HHS recommends striking this provision.
- It is widely accepted that Indians are under-enrolled in CMS programs. The TTAG has an outreach and enrollment subcommittee established to increase enrollment of AI/ANs. The TTAG developed an AI/AN CMS Strategic Plan, dated January 31, 2006, to specifically address under-enrollment of AI/ANs in the CMS programs. Yet, the HHS comments indicate it is not clear what type of activities would be required. HHS recommends striking those provisions that could significantly improve AI/AN access to Medicaid and SCHIP outreach and enrollment in Indian Country.
- Many AI/ANs served by Indian health programs will not enroll in Medicaid when a State imposes Medicaid cost-sharing because of the Federal government's trust responsibility to provide health care. TTAG efforts to administratively achieve a cost-sharing exemption for these patients have been unsuccessful. Sec. 204 of S. 1200 would provide such exemptions in law, but HHS, without any explanation, recommends striking the provision.
- Good data on the extent of Indian participation in Medicare, Medicaid and SCHIP is vital for sound policymaking. The absence of such data is well known throughout Indian Country, CMS and Congress. The TTAG established a Data subcommittee to address the lack of data of AI/ANs in the CMS programs. Yet, HHS objects to the Finance Committee-drafted provision that would require CMS and IHS to gather such data on grounds that it would be "difficult and burdensome to collect it."

In light of the Department's failure to discuss with the TTAG the underlying policy objectives or ramifications of the Medicare, Medicaid and SCHIP provisions in S. 1200, the TTAG is now uncertain how your Department views the TTAG's role in the agency's development of Indian health policy. We will certainly continue to work with CMS in good faith to carry on the important work of improving access to care for AI/ANs, a population whose health status is deficient by nearly every measure. But, sound policymaking requires open, on-going, substantive and meaningful dialogue between HHS and Tribes before final policy decisions are adopted.

The CMS TTAG would appreciate a response to our concerns and welcomes you to participate in our next TTAG meeting to further discuss what role the TTAG will play during your administration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Valerie Davidson', with a long, sweeping flourish extending to the right.

Valerie Davidson
Chair, CMS TTAG

Cc: Kerry Weems, Acting Administrator, CMS
Herb Kuhn, Deputy Administrator, CMS