

IHS TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE

c/o Self-Governance Communication and Education
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Submitted via: consultation@ihs.gov

October 31, 2016

Mary Smith, Principal Deputy Director
Indian Health Service
The Reyes Building
801 Thompson Avenue, Suite 400
Rockville, MD 20852

RE: Comments on Catastrophic Health Emergency Fund Proposed Rule (RIN 0905-AC97)

Dear Principal Deputy Director Smith,

I write on behalf of the Indian Health Service (IHS) Tribal Self-Governance Advisory Committee (TSGAC) to follow up on our previous comments to the IHS Proposed Rule on the Catastrophic Health Emergency Fund (CHEF). The TSGAC commented in detail to the Proposed Rule by letter dated May 10, 2016 (attached). Thank you for considering our previous input by first extending the comment period, and then conducting a Tribal Consultation process over the last several months. TSGAC members have commented verbally on the proposal frequently at these Tribal Consultation sessions.

In summary, our primary issues remain with the Proposed Rule as follows (with more detail in the attached letter):

- 1. Definition of Alternate Resources:** We oppose the inclusion of "Tribal" as part of the list of primary payers in the "alternate resource" definition. The inclusion of Tribal self-insurance (or other resources) as an alternate resource prior to CHEF reimbursement is not appropriate. We insist that IHS remove "Tribal" from the definition of "alternate resource." IHS has apparently interpreted "Local" resources to include Tribal resources, which is not acceptable, as payment for health services is not a Tribal obligation, but rather a federal obligation to Indians. In previous IHS payer of last resort regulations, as well as policy guidance in the IHS Manual, IHS specifically provided that certain Tribally-funded health insurance plans would not be considered "alternate resources" under IHS' payor of last resort regulations in an effort to be consistent with Congressional intent not to burden Tribal resources.
- 2. Reimbursement Procedure:** The procedure for reimbursement set out in the proposed rule does not provide any criteria or procedure for how Purchased and Referred Care (PRC) directors will review CHEF claims or how IHS headquarters will determine whether alternate resources exist. Such determinations are left entirely to the discretion of Area Office PRC programs and IHS headquarters. This lack of transparency is very concerning and we request that the procedures for governing the reimbursement of CHEF funds include procedures guiding the award process as well as the submission process.
- 3. Distinction Between Referral vs. Authorization for Payment:** The proposed definition of PRC includes the use of the word "referral" and by doing so confuses the distinction between a referral for services and an authorization for payment. This is important given the use of the term "referral" under section 1402(d)(2) of the Affordable Care Act pertaining to qualifications for cost-sharing protections. To facilitate the effective implementation of the ACA's cost-sharing protections, it is important that a clear distinction be made between a referral for services and an authorization for payment.

Despite our continuing concerns with the Proposed Rule, the TSGAC supports the IHS PRC Workgroup recommendation that the threshold for CHEF claims be reestablished at \$19,000. In light of the consistent Tribal support for this element of the Proposed Rule and given the substantive revisions that would be required to address the objectionable provisions, the TSGAC strongly recommends that the Final Rule only include provisions to set the CHEF threshold at \$19,000 and not move any other regulatory provisions forward at this time.

Further, we oppose increasing the CHEF threshold above \$19,000 based upon the Consumer Price Index. Should IHS find that it does not have the authority to issue a regulation maintaining the threshold at the \$19,000 level permanently, we support the IHS in seeking a legislative change to accomplish this either through the budget formulation process, or by other means.

Again, we thank you for opening a dialogue over these months on CHEF matters, which has allowed Tribes to better understand the impact of these proposed regulations. The TSGAC remains willing to partner with IHS to improve efficiency and reach of our chronically underfunded PRC/CHEF programs. If you have any questions or wish to discuss these comments further, please contact me at (860) 862-6192 or via email at lmalerba@moheganmail.com.

Sincerely,



Chief Lynn Malerba, Mohegan Tribe of Connecticut
Chairwoman, IHS TSGAC

cc: Jennifer Cooper, Acting Director, Office of Tribal Self-Governance, IHS
TSGAC Members and Technical Workgroup

Attachment:

- TSGAC, Comments on Catastrophic Health Emergency Fund Proposed Rule (RIN 0905-AC97), dated May 10, 2016