

March 7, 2017

Dr. Tom Price  
Secretary  
Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Price:

On behalf of the Centers for Medicare and Medicaid Services Tribal Technical Advisory Group<sup>1</sup> (TTAG) we would like to provide you with our priorities as the new Administration moves forward with new policies around Medicaid, Medicare, and the Federally Facilitated Marketplace. We want to strengthen the partnership that Tribes and the Department, including CMS, have developed over the years and ensure that specific American Indian and Alaska Native (AI/AN) protections are maintained in any changes that are made to the Medicaid, Medicare, Children's Health Insurance Program, and Affordable Care Act programs. As our advocate, we would like your assistance in communicating our priorities which are:

- **Retain eligibility under Medicaid to all AI/ANs up to 138% FPL.**
- **Maintain or strengthen affordability of individual market (e.g., Marketplace) coverage for AI/ANs.**
- **Ensure the trust responsibility for Indian health care remains a federal responsibility and is not shifted to the states.**
- **Maintain 100% FMAP and give full effect to CMS's recent State Health Official (SHO) Letter.**
- **Ensure Medicaid payments to the Indian health care system are not subject to a block grant or per capita cap.**
- **Preserve AI/AN-specific provisions in Medicaid, including protections from premiums and cost sharing, prohibition of classifying trust lands and cultural and religious items as resources for eligibility purposes, and other protections.**
- **Extend and apply these provisions to urban Indian health care programs (UIHPs), whenever permissible under federal law.**

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<sup>1</sup> The TTAG advises the Centers for Medicare and Medicaid Services on Indian health policy issues involving Medicare, Medicaid, the Children's Health Insurance Program, and other health care programs funded (in whole or in part) by CMS. In particular, the TTAG focuses on providing policy advice designed to improve the availability of health care services to American Indians and Alaska Natives under these federal health care programs, including through providers operating under the health programs of the Indian Health Service, Indian Tribes, Tribal organizations, and urban Indian organizations.

There is a special relationship between the United States and Indian Tribes that creates a trust responsibility toward Indian people regarding health care. The federal trust responsibility to Indians is enshrined in the United States Constitution and rooted in treaties. In addition, Indians have a special political status, which has been confirmed in Supreme Court precedent. Rather than merely being a racial or ethnic group, and has upheld Indian-specific legislation on that basis. The federal government has a duty to consult with Indian Tribes on federal policies with implications for the Indian health care delivery system. This consultation requirement is rooted in Tribal sovereignty, treaty rights, the government-to-government relationship, and the trust responsibility. It is also reflected in federal policy and is confirmed in the CMS Tribal Consultation Policy

The Indian Health Service (IHS) was created in 1955 to assist the United States in fulfilling its trust obligation to provide health care to Tribes. This trust responsibility is founded in treaties and other historical relations with tribes, and reflected in numerous statutes. Twenty years later, Congress enacted the Indian Self-Determination and Education Assistance Act of 1975 to enable Tribes and Tribal Organizations to directly operate health programs that would otherwise be operated by IHS, thereby empowering Tribes to design and operate health programs that are responsible to community needs. In 1976 Congress amended the Social Security Act to authorize Medicare and Medicaid reimbursement for services provided in IHS and Tribally operated health care facilities, recognizing the trust responsibility for health was not limited to just the Indian Health Service but the entire federal government.<sup>2</sup> Medicaid reimbursements are critically important in filling the gap created by chronic underfunding of IHS, and are a critical source of funding for IHS, Tribal health programs, and Urban Indian health programs.

While we understand that any changes to the laws authorizing these health insurance programs are done through Congress, we appreciate the federal government's commitment to honoring its trust responsibility in advocating for AI/AN protections and trust that HHS, and well as CMS, will consult with the TTAG and Tribal leaders in any changes in regulations and policies. In addition, we appreciate CMS' role in assisting Tribes with state consultation regarding any changes to state Medicaid plans. We look forward to continuing our partnership with CMS and are confident that together we will work toward the betterment of Tribal Nations and American Indians and Alaska Natives.

Respectfully,



W. Ron Allen, Chair,  
Tribal Technical Advisory Group

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<sup>2</sup> 42 U.S.C. § 1395qq and § 1396j