

IHS TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE

c/o Self-Governance Communication and Education

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Submitted via regulations.gov

March 31, 2014
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attn: CMS Desk Officer

RE: CMS-3178-P; Comment on Proposed Emergency Preparedness Rule

On behalf of the Tribal Self-Governance Advisory Committee (TSGAC), I am writing regarding to comment on the Centers for Medicare & Medicaid Services' (CMS) proposed rule "Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers" (CMS-3178-P). Established in 1996, the TSGAC provides information, education advocacy and policy guidance for implementation of Self-Governance within the Indian Health Service (IHS). We appreciate the opportunity to provide comments.

Background

The proposed rule would establish emergency preparedness conditions of participation for Medicare- and Medicaid-participating providers. The proposed rule includes detailed emergency preparedness conditions of preparedness for seventeen types of health care facilities: religious nonmedical health care institutions; ambulatory surgical centers; hospices; inpatient psychiatric services for individuals under age 21 in psychiatric facilities or programs; programs of all-inclusive care for the elderly; hospitals; transplant centers; long term care facilities, skilled nursing facilities, and nursing facilities; intermediate care facilities for individuals with intellectual disabilities; home health agencies; comprehensive outpatient rehabilitation facilities; critical access hospitals; clinics, rehabilitation agencies, and public health agencies as providers of outpatient physical therapy and speech-language pathology services; community mental health centers; organ procurement organizations; rural health clinics and Federally qualified health centers; and end-stage renal disease facilities. 78 Fed. Reg. 79082, 79090 (Dec. 27, 2013). Indian health facilities that participate in Medicare or Medicaid within these categories will be subject to these requirements.

The proposed rule's emergency preparedness requirements vary based on the type of facility at issue. For instance, hospitals have different requirements than rural health clinics and Federally qualified health centers. However, for all categories of facilities, the rules require: (1) performing a risk assessment; (2) developing and implementing emergency policies and procedures based on the risk assessment; and, (3) developing and maintaining an emergency preparedness communication plan that complies with Federal and State law; and (4) developing and maintaining an emergency preparedness training and testing program. 78 Fed. Reg. at 79085.

Dependent upon the type of facility, the rule also mandates certain elements of emergency preparedness, including particular types of evacuation plans, the need to have subsistence supplies for patients and staff, provision of back-up care arrangements, and other such requirements.

Although current conditions for participation provide various requirements for emergency response, these proposed rules are comprehensive and challenging. It is frankly beyond our capacity to comment on each of the proposed detailed requirements. We do appreciate the opportunity to comment regarding implementation of the requirements, as well as certain other aspects of the proposed rule where Tribes – both as health providers and as governments – may be affected by them.

1. Impact on Tribes and Indian Health Programs.

Tribal communities, and Indian health care facilities, are generally found in rural and remote locations, and the resources to respond to emergencies are often limited. Jurisdictional disputes regarding activity on Tribal lands can also create barriers to fully effectuate emergency response planning.

The summary of this proposed rule begins with this Statement:

This proposed rule would establish national emergency preparedness requirements for Medicare- and Medicaid-participating providers and suppliers to ensure that they adequately plan for both natural and man-made disasters, and coordinate with Federal, State, Tribal, regional, and local emergency preparedness systems.

78 Fed. Reg. 79082. Although the proposed rule indicates that it does not mandate any new requirements for Tribal governments, it acknowledges that the new rule will impose significant costs on facilities themselves. 78 Fed. Reg. 79170. We disagree. While this rule focuses on the responsibility of health providers, certain of those responsibilities cannot be satisfied without the participation of governments with which they must collaborate, including Tribal governments. We offer no objection to this, but believe the demands such responsibilities place on Tribal governments should be acknowledged.

In addition, as the proposed rule does acknowledge, Tribes operate the health facilities that must meet these requirements, and therefore the rule will impose costs on Tribal governments. These costs extend to overcoming the challenges that sometimes arise when Tribal facilities must enter into collaborative arrangements with State and local entities. For instance, the proposed rule envisions cooperative agreements and plans with similarly situated entities in the State. The proposed rule also suggests that State and local governments may be able to provide training for small rural facilities. Certainly in some locations, these relationships are well established.

In other locations, however, State and local entities may refuse to cooperate with Tribes (or their health programs) or seek to do so only if the Tribe will agree to unreasonable conditions. This unwillingness to cooperate seems counter-intuitive given the common interest in appropriate emergency response, but State and local relations with Tribes are often fraught with hostility arising from centuries of conflict (armed and in the courts); misunderstanding about the fact that American Indians and Alaska Natives are citizens of the State in which they live and entitled to all the protections made available to other citizens from State and local governments; and mistaken beliefs that Tribes and their members do not contribute to the financial well-being of State and local governments and that the Federal government is solely responsible for providing any assistance or support that a Tribe (or its health programs) might need.

These challenges need to be acknowledged and addressed proactively.

1.1 We recommend that CMS, perhaps collaboratively with other Federal agencies, provide training for Tribes and Indian health programs regarding current emergency preparedness laws and directives and their roles in satisfying these laws and direction.

1.2 We recommend that CMS, perhaps with other Federal agencies, offer on- site technical assistance and other support to Indian health programs that need help to obtain the necessary collaboration of non-Indian health providers and State and local of governments.

1.3 Consultation with Indian health programs about how the new requirements will affect various provider types should be scheduled, and provisions for delayed implementation of the requirements in Indian health facilities should be adopted until adequate consultation and training can occur.

2. Alternative Approaches to Implementation.

We appreciate the request for comment on alternative approaches to implementation of the new rules. We believe that all four strategies should be considered and flexibly should be provided for under each strategy. Within each provider class there is so much variation in size, location, resources, relationship with other providers, and other characteristics, we believe that options for implementation need to be offered systemically and upon request of individual providers. More specifically we offer the following recommendations:

2.1 Allow providers to obtain waivers of the deadlines and of specific requirements. One year may simply not be long enough for some providers to become familiar with all of the new requirements and to implement them. The rules should allow for extensions of time so long as there is at least a minimal plan for compliance within the provider's proposed timeline.

2.2 Providers should be allowed to establish their own training exercise schedule based on local conditions. Again, because there is so much variation in types of facilities and the conditions under which they operate, "one size fits all" training will not necessarily achieve the best outcome. The facility will often be in the best position to develop its own plan and schedule.

2.3 When multiple facility types are administered by the same owner, the facilities should be able to obtain waivers of specific requirements or to have a single multi-facility plan approved, if they can collectively adopt a functionally equivalent strategy based on the requirements that may apply to one of their other facility types. Operation of more than one facility type is not uncommon among Tribal health programs that have expanded the types of care they offer beyond hospitals and ambulatory care clinics. Under the proposed rules, each of these facility types must meet certain specific requirements that may lead to duplicative, and ultimately confusing, emergency protocols. Allowing more flexible implementation that is designed to achieve effective emergency response may lead to lower costs and better results. This also would provide a test bed for various implementation strategies by subsets of providers.

2.4 A facilities should be offered an opportunity to review its existing policies and procedures and to obtain approval for continuing to rely on them instead of implementing the new requirements, if the facility can demonstrate that the existing implementation achieves a substantially similar outcome. Deadlines for compliance with any new requirements should apply only after the continuation plan has been reviewed and commented on by the review agency. We believe this will lead to substantially

Letter to CMS

Re: CMS-3178-P; Comment on Proposed Emergency Preparedness Rule

March 31, 2014

Page 4

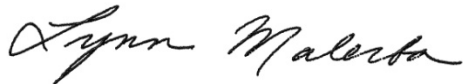
more effective consideration of the integration of current and new policy than can occur during this comment period.

3. Conclusion

We recognize the importance of emergency preparedness and its importance in Tribal communities, however we are concerned that the rules are too prescriptive and provide too little flexibility to be effective in the circumstances in which Indian health programs operate. We hope the recommendations above will be considered, at least for Indian health programs, and perhaps for other providers.

Please feel free to contact me if you are in need of additional information at (860) 862-6192; or via email: lmalerba@moheganmail.com. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Lynn Malerba". The signature is written in a cursive, flowing style.

Chief Lynn Malerba, Mohegan Tribe
Chairwoman, TSGAC

cc: Dr. Yvette Roubideaux, Director, IHS
P. Benjamin Smith, Director, Office of Tribal Self-Governance, IHS
Kitty Marx, Director of Tribal Affairs, CMS
TSGAC Members and Technical Workgroup

ATTACHMENT A

Premium Contribution Amount for Lowest Cost									
Bronze Plan, Anchorage, Alaska, 2014									Household of: 1
	Reference Plan	Selected Plan							
	IF... BCBS Plus 2500 HSA, a Multi-State Plan (1)	Be Savvy (1) Bronze (lowest cost Moda)	Premium Contribution	Premium Contribution	Premium Contribution	Premium Contribution	Premium Contribution	Premium Contribution	Premium Contribution
		Plan Premium	105% FPL	155% FPL	200% FPL	255% FPL	305% FPL	355% FPL	405% FPL
0-20	\$2,580	\$1,848	-\$119	\$209	\$1,076	\$1,848	\$1,848	\$1,848	\$1,848
21	\$4,068	\$2,904	-\$863	-\$223	\$644	\$1,835	\$2,904	\$2,904	\$2,904
22	\$4,068	\$2,904	-\$863	-\$223	\$644	\$1,835	\$2,904	\$2,904	\$2,904
23	\$4,068	\$2,904	-\$863	-\$223	\$644	\$1,835	\$2,904	\$2,904	\$2,904
24	\$4,068	\$2,904	-\$863	-\$223	\$644	\$1,835	\$2,904	\$2,904	\$2,904
25	\$4,092	\$2,916	-\$875	-\$235	\$632	\$1,823	\$2,916	\$2,916	\$2,916
26	\$4,164	\$2,976	-\$887	-\$247	\$620	\$1,811	\$2,970	\$2,976	\$2,976
27	\$4,260	\$3,048	-\$911	-\$271	\$596	\$1,787	\$2,946	\$3,048	\$3,048
28	\$4,428	\$3,156	-\$971	-\$331	\$536	\$1,727	\$2,886	\$3,156	\$3,156
29	\$4,560	\$3,252	-\$1,007	-\$367	\$500	\$1,691	\$2,850	\$3,252	\$3,252
30	\$4,620	\$3,300	-\$1,019	-\$379	\$488	\$1,679	\$2,838	\$3,300	\$3,300
31	\$4,716	\$3,372	-\$1,043	-\$403	\$464	\$1,655	\$2,814	\$3,372	\$3,372
32	\$4,812	\$3,444	-\$1,067	-\$427	\$440	\$1,631	\$2,790	\$3,444	\$3,444
33	\$4,872	\$3,480	-\$1,091	-\$451	\$416	\$1,607	\$2,766	\$3,448	\$3,480
34	\$4,944	\$3,528	-\$1,115	-\$475	\$392	\$1,583	\$2,742	\$3,424	\$3,528
35	\$4,968	\$3,552	-\$1,115	-\$475	\$392	\$1,583	\$2,742	\$3,424	\$3,552
36	\$5,004	\$3,576	-\$1,127	-\$487	\$380	\$1,571	\$2,730	\$3,412	\$3,576
37	\$5,040	\$3,600	-\$1,139	-\$499	\$368	\$1,559	\$2,718	\$3,400	\$3,600
38	\$5,076	\$3,624	-\$1,151	-\$511	\$356	\$1,547	\$2,706	\$3,388	\$3,624
39	\$5,136	\$3,672	-\$1,163	-\$523	\$344	\$1,535	\$2,694	\$3,376	\$3,672
40	\$5,196	\$3,720	-\$1,175	-\$535	\$332	\$1,523	\$2,682	\$3,364	\$3,720
41	\$5,304	\$3,792	-\$1,211	-\$571	\$296	\$1,487	\$2,646	\$3,328	\$3,792
42	\$5,388	\$3,852	-\$1,235	-\$595	\$272	\$1,463	\$2,622	\$3,304	\$3,852
43	\$5,520	\$3,948	-\$1,271	-\$631	\$236	\$1,427	\$2,586	\$3,268	\$3,948
44	\$5,688	\$4,068	-\$1,319	-\$679	\$188	\$1,379	\$2,538	\$3,220	\$4,068
45	\$5,880	\$4,200	-\$1,379	-\$739	\$128	\$1,319	\$2,478	\$3,160	\$4,200
46	\$6,108	\$4,368	-\$1,439	-\$799	\$68	\$1,259	\$2,418	\$3,100	\$4,368
47	\$6,360	\$4,548	-\$1,511	-\$871	-\$4	\$1,187	\$2,346	\$3,028	\$4,548
48	\$6,660	\$4,752	-\$1,607	-\$967	-\$100	\$1,091	\$2,250	\$2,932	\$4,752
49	\$6,948	\$4,956	-\$1,691	-\$1,051	-\$184	\$1,007	\$2,166	\$2,848	\$4,956
50	\$7,272	\$5,196	-\$1,775	-\$1,135	-\$268	\$923	\$2,082	\$2,764	\$5,196
51	\$7,596	\$5,424	-\$1,871	-\$1,231	-\$364	\$827	\$1,986	\$2,668	\$5,424
52	\$7,944	\$5,676	-\$1,967	-\$1,327	-\$460	\$731	\$1,890	\$2,572	\$5,676
53	\$8,304	\$5,928	-\$2,075	-\$1,435	-\$568	\$623	\$1,782	\$2,464	\$5,928
54	\$8,688	\$6,204	-\$2,183	-\$1,543	-\$676	\$515	\$1,674	\$2,356	\$6,204
55	\$9,072	\$6,480	-\$2,291	-\$1,651	-\$784	\$407	\$1,566	\$2,248	\$6,480
56	\$9,492	\$6,780	-\$2,411	-\$1,771	-\$904	\$287	\$1,446	\$2,128	\$6,780
57	\$9,924	\$7,092	-\$2,531	-\$1,891	-\$1,024	\$167	\$1,326	\$2,008	\$7,092
58	\$10,368	\$7,416	-\$2,651	-\$2,011	-\$1,144	\$47	\$1,206	\$1,888	\$7,416
59	\$10,596	\$7,572	-\$2,723	-\$2,083	-\$1,216	\$0	\$1,134	\$1,816	\$7,572
60	\$11,040	\$7,896	-\$2,843	-\$2,203	-\$1,336	\$0	\$1,014	\$1,696	\$7,896
61	\$11,436	\$8,172	-\$2,963	-\$2,323	-\$1,456	\$0	\$894	\$1,576	\$8,172
62	\$11,688	\$8,352	-\$3,035	-\$2,395	-\$1,528	\$0	\$822	\$1,504	\$8,352
63	\$12,012	\$8,580	-\$3,131	-\$2,491	-\$1,624	\$0	\$726	\$1,408	\$8,580
64+	\$12,204	\$8,712	-\$3,191	-\$2,551	-\$1,684	\$0	\$666	\$1,348	\$8,712

Letter to CMS

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March 31, 2014

ATTACHMENT B

Premium Contribution Amount for Lowest Cost Bronze Plan, Anchorage, Alaska, 2014									Household size: 2
	Reference Plan	Selected Plan	Plan enrollees: 2						
	IF... BCBS Plus 2500 HSA, a Multi- State Plan (1)	Be Savvy Bronze (lowest cost Moda)	Premium Contri- bution	Premium Contri- bution	Premium Contri- bution	Premium Contri- bution	Premium Contri- bution	Premium Contri- bution	Premium Contri- bution
	2	Plan Premium(s)	105% FPL	155% FPL	200% FPL	255% FPL	305% FPL	355% FPL	405% FPL
0-20	\$5,160	\$3,696	-\$1,057	-\$193	\$978	\$2,586	\$3,696	\$3,696	\$3,696
21	\$8,136	\$5,808	-\$1,921	-\$1,057	\$114	\$1,722	\$3,287	\$4,208	\$5,808
22	\$8,136	\$5,808	-\$1,921	-\$1,057	\$114	\$1,722	\$3,287	\$4,208	\$5,808
23	\$8,136	\$5,808	-\$1,921	-\$1,057	\$114	\$1,722	\$3,287	\$4,208	\$5,808
24	\$8,136	\$5,808	-\$1,921	-\$1,057	\$114	\$1,722	\$3,287	\$4,208	\$5,808
25	\$8,184	\$5,832	-\$1,945	-\$1,081	\$90	\$1,698	\$3,263	\$4,184	\$5,832
26	\$8,328	\$5,952	-\$1,969	-\$1,105	\$66	\$1,674	\$3,239	\$4,160	\$5,952
27	\$8,520	\$6,096	-\$2,017	-\$1,153	\$18	\$1,626	\$3,191	\$4,112	\$6,096
28	\$8,856	\$6,312	-\$2,137	-\$1,273	-\$102	\$1,506	\$3,071	\$3,992	\$6,312
29	\$9,120	\$6,504	-\$2,209	-\$1,345	-\$174	\$1,434	\$2,999	\$3,920	\$6,504
30	\$9,240	\$6,600	-\$2,233	-\$1,369	-\$198	\$1,410	\$2,975	\$3,896	\$6,600
31	\$9,432	\$6,744	-\$2,281	-\$1,417	-\$246	\$1,362	\$2,927	\$3,848	\$6,744
32	\$9,624	\$6,888	-\$2,329	-\$1,465	-\$294	\$1,314	\$2,879	\$3,800	\$6,888
33	\$9,744	\$6,960	-\$2,377	-\$1,513	-\$342	\$1,266	\$2,831	\$3,752	\$6,960
34	\$9,888	\$7,056	-\$2,425	-\$1,561	-\$390	\$1,218	\$2,783	\$3,704	\$7,056
35	\$9,936	\$7,104	-\$2,425	-\$1,561	-\$390	\$1,218	\$2,783	\$3,704	\$7,104
36	\$10,008	\$7,152	-\$2,449	-\$1,585	-\$414	\$1,194	\$2,759	\$3,680	\$7,152
37	\$10,080	\$7,200	-\$2,473	-\$1,609	-\$438	\$1,170	\$2,735	\$3,656	\$7,200
38	\$10,152	\$7,248	-\$2,497	-\$1,633	-\$462	\$1,146	\$2,711	\$3,632	\$7,248
39	\$10,272	\$7,344	-\$2,521	-\$1,657	-\$486	\$1,122	\$2,687	\$3,608	\$7,344
40	\$10,392	\$7,440	-\$2,545	-\$1,681	-\$510	\$1,098	\$2,663	\$3,584	\$7,440
41	\$10,608	\$7,584	-\$2,617	-\$1,753	-\$582	\$1,026	\$2,591	\$3,512	\$7,584
42	\$10,776	\$7,704	-\$2,665	-\$1,801	-\$630	\$978	\$2,543	\$3,464	\$7,704
43	\$11,040	\$7,896	-\$2,737	-\$1,873	-\$702	\$906	\$2,471	\$3,392	\$7,896
44	\$11,376	\$8,136	-\$2,833	-\$1,969	-\$798	\$810	\$2,375	\$3,296	\$8,136
45	\$11,760	\$8,400	-\$2,953	-\$2,089	-\$918	\$690	\$2,255	\$3,176	\$8,400
46	\$12,216	\$8,736	-\$3,073	-\$2,209	-\$1,038	\$570	\$2,135	\$3,056	\$8,736
47	\$12,720	\$9,096	-\$3,217	-\$2,353	-\$1,182	\$426	\$1,991	\$2,912	\$9,096
48	\$13,320	\$9,504	-\$3,409	-\$2,545	-\$1,374	\$234	\$1,799	\$2,720	\$9,504
49	\$13,896	\$9,912	-\$3,577	-\$2,713	-\$1,542	\$66	\$1,631	\$2,552	\$9,912
50	\$14,544	\$10,392	-\$3,745	-\$2,881	-\$1,710	\$0	\$1,463	\$2,384	\$10,392
51	\$15,192	\$10,848	-\$3,937	-\$3,073	-\$1,902	\$0	\$1,271	\$2,192	\$10,848
52	\$15,888	\$11,352	-\$4,129	-\$3,265	-\$2,094	\$0	\$1,079	\$2,000	\$11,352
53	\$16,608	\$11,856	-\$4,345	-\$3,481	-\$2,310	\$0	\$863	\$1,784	\$11,856
54	\$17,376	\$12,408	-\$4,561	-\$3,697	-\$2,526	\$0	\$647	\$1,568	\$12,408
55	\$18,144	\$12,960	-\$4,777	-\$3,913	-\$2,742	\$0	\$431	\$1,352	\$12,960
56	\$18,984	\$13,560	-\$5,017	-\$4,153	-\$2,982	\$0	\$191	\$1,112	\$13,560
57	\$19,848	\$14,184	-\$5,257	-\$4,393	-\$3,222	\$0	\$0	\$872	\$14,184
58	\$20,736	\$14,832	-\$5,497	-\$4,633	-\$3,462	\$0	\$0	\$632	\$14,832
59	\$21,192	\$15,144	-\$5,641	-\$4,777	-\$3,606	\$0	\$0	\$488	\$15,144
60	\$22,080	\$15,792	-\$5,881	-\$5,017	-\$3,846	\$0	\$0	\$248	\$15,792
61	\$22,872	\$16,344	-\$6,121	-\$5,257	-\$4,086	\$0	\$0	\$8	\$16,344
62	\$23,376	\$16,704	-\$6,265	-\$5,401	-\$4,230	\$0	\$0	\$0	\$16,704
63	\$24,024	\$17,160	-\$6,457	-\$5,593	-\$4,422	\$0	\$0	\$0	\$17,160
64+	\$24,408	\$17,424	-\$6,577	-\$5,713	-\$4,542	\$0	\$0	\$0	\$17,424