

# IHS TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE

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Submitted to: [www.regulations.gov](http://www.regulations.gov)

May 23, 2014

The Honorable Kathleen Sebelius  
Secretary  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Room 120F  
Washington, DC 20201

## RE: **Delaying Meaningful Use Electronic Health Record Program - Stage 3**

Dear Secretary Sebelius:

On behalf of the Tribal Self-Governance Advisory Committee (TSGAC), I would like to recognize your advocacy as the Secretary of Health and Human Services (HHS) to ensure American Indians and Alaska Natives (AI/AN) Tribes and Tribal Health Organizations are able to participate in the Medicare/Medicaid meaningful use (MU) electronic health record (EHR) program through the Centers for Medicare and Medicaid (CMS) Office of the National Coordinator for Health Information Technology (ONC).

Many Tribal Health Organizations (THO's) have been successful in meeting MU stage 2 requirements, and wholeheartedly support the efforts of HHS and ONC in achieving its potential clinical efficiencies and health improvements. However, as the primary providers of care for the AI/AN beneficiaries, we join the American Medical Association (AMA), the College of Healthcare Information Management Executives (CHIME) and 46 of the nation's largest physician and hospital organizations to call for additional time and flexibility to meet the administrative requirements for the MU program.

We agree that *additional time and new flexibility* are vitally important to ensure that our Tribal hospitals and physicians continue to make advances through use of technology to improve care for our patients. By providing additional time, HHS would be demonstrating needed flexibility to maximize program success, without compromising momentum towards interoperability and care coordination supported by health information technology (IT).

Specific points to consider in support of our request:

- 2014 Certification requirements are extremely complex, and development is challenging;
- Certification testing was delayed by government shutdown and related funding factors
- Resource and Patient Management System (RPMS) Alpha/Beta testing by production sites is moving slowly due to complexity;
- On-boarding with Direct Trust for secure messaging is still pending, and consequently national release of 2014 Certified RPMS EHR before July 2014 is unlikely;
- The issues with 2014 EHR Certification and implementation are industry-wide and affect many EHR developers and their customers;

- CMS has recognized this by allowing a “hardship exemption” from the 2016 Medicare payment adjustment for those not achieving MU in 2014;
- This does NOT make up for loss of 2014 incentives:
  - Medicaid incentives can be recovered in future years; and,
  - Medicare incentives cannot be recovered.
- IHS & Tribal Hospitals using RPMS will not be able to attest in 2014, meaning no MU incentive payments received in FY 2015;
- The same will be true for many Eligible IHS & Tribal Providers who use other commercial EHR vendors
- Imposed Physician Quality Reporting System (PQRS) penalties follow the provider which creates an addition recruiting concern for Tribes who already have a difficult time filling positions, especially in cases wherein otherwise qualified providers may be penalized unintentionally for reasons beyond their control
- Missed Medicaid payments can be “made up” in future years, but missed Medicare payments are lost;
- CMS hardship waiver should protect from 2016 Medicare payment adjustments if MU not achieved in 2014’ and
- If sites do not have 2014 Certified EHR installed by the beginning of the 2015 reporting period (10/1/14 or 1/1/15), they will not get 2015 payments in 2016, and will have payment adjustments in 2017.

In various informal consultations relating to the MU program, our leaders have urged the Federal government to work with Tribes to slow down the process to ensure EHRs can be widely adopted and safely implemented throughout the Tribal health care system without penalty or loss of reimbursement for cost of care provided. As you are aware, the Indian Health Service is already the most underfunded Federally-supported health system. Exacerbating this by payment penalties or inability to capture full reimbursement for care provided appears to be counterintuitive to current Administration policy which has otherwise been supportive of maximizing opportunities to increase non-IHS resources as a means to address health and disparities experienced by all AI/ANs.

Attempting to transform the entire health system in such a rapid and prescriptive manner has produced undesired consequences that often impede, rather than enable, efficient clinical care. Our experience has shown that EHR systems we use, both RPMS and non-RPMS, are not yet able to fully accomplish health information exchange, preventing the transmission of patient medical information as required. The delays in technological fixes by Health IT vendors to transmit data safely and securely will effectively make it impossible to meet MU Stage 3 requirements. Although we will be able to apply for a hardship exemption, THO’s and providers will be penalized unnecessarily from Medicare reimbursements.

It is concerning that the MU program continues to move on an aggressive timeframe without regard to the challenges faced by physicians, hospitals and vendors. There is a need to step back and focus on ensuring interoperable and usable systems. Continued difficulties experienced in the current program are clearly indicative that Federal requirements must be revisited and that delays for Stage 3 requirements are warranted.

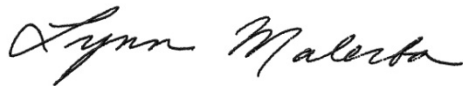
Anecdotal reports from our Tribal providers indicate that varying degrees of frustration with EHR deployment. They express a need for more training and education to learn how to best deploy and use the EHR systems as a meaningful extension of patient care. Now that

EHRs have multiple requirements imposed by regulators, payers, auditors, and lawyers, we must take care not to lose sight of the original intent: *to support the adoption of health information technology and the promotion of nationwide health information exchange to improve health care.* In order to accomplish this, Tribal Health providers must have well-designed and field-tested systems which will support the transition to electronic delivery models. Industry-wide Health IT infrastructure barriers should be resolved and certification requirements should be paced to allow vendors to make technology improvements to allow an efficient and secure electronic information exchange.

We urge you, as the Secretary of HHS, to take our concerns into consideration and move forward with implementing administrative measures to extend deadlines imposed by the ONC for Stage 2 & 3 of the Medicare/Medicaid meaningful use EHR program requirements. As such, we as Self Governance Tribes who are managing one third of all Indian Health services across the country, strongly support the May 2014 proposed rule regarding Incentive Payments for CEHRT (CMS-0052-P). This rule proposes to change the MU stage timeline and the definition of certified electronic health record technology (CEHRT). It would also change the requirements for the reporting of clinical quality measures for 2014. These changes are necessary to allow Tribes to more reasonably achieve better care for our patients as was originally intended.

Again, we want to thank you for your sincere efforts to allow Tribes to consult on HHS policies and issues affecting Tribal country. Should you need additional information or have questions regarding the report, please contact me via email: [lmalerba@moheganmail.com](mailto:lmalerba@moheganmail.com) or at (860) 862-6192.

Sincerely,



Chief Lynn Malerba, Mohegan Tribe  
Chairwoman, TSGAC

cc: Yvette Roubideaux, MD, MPH, Acting IHS Director  
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TSGAC and Technical Workgroup