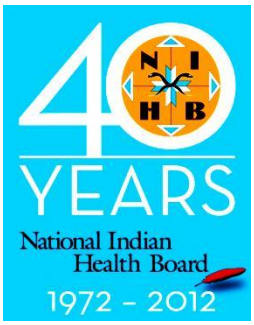
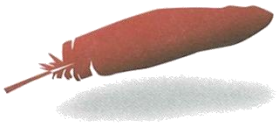


National Indian Health Board



Delivered via electronic transmission

December 26, 2012

Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention CMS-9972-P
P.O. Box 8012
Baltimore, MD 21244-1850

RE: Comments regarding CMS-9972-P; Patient Protection and Affordable Care Act; Health Insurance Market Rules; Rate Review

I write on behalf of the National Indian Health Board (NIHB) [1] to the Centers for Medicare and Medicaid Services (CMS) regarding the request for comments on CMS-9972-P pertaining to the Patient Protection and Affordable Care Act; Health Insurance Market Rules; Rate Review published in the *Federal Register* on November 26, 2012 (Proposed Rule).[2] We appreciate the opportunity to comment on the proposed health insurance market rules and rate review. We provide below recommended additions to the Notice of Denial of Medical Coverage (or Payment) ("NDMCoP") as well to the Form Instructions for the NDMCoP.

Accessibility of Insurance in Rural and Remote Areas.

Insurance regulation is generally outside our specific area of expertise. We do, however, want to make a general comment of concern about the availability of insurance in rural and remote areas where the majority of tribes are located. We are not in the position to assess whether the proposed rules will

[1] Established 40 years ago, NIHB is an inter-Tribal organization that advocates on behalf of Tribal governments for the provision of quality health care to all American Indians and Alaska Natives. NIHB is governed by a Board of Directors consisting of a representative from each of the twelve Indian Health Service ("IHS") Areas. Each Area Health Board elects a representative to sit on the NIHB Board of Directors. In areas where there is no Area Health Board, Tribal governments choose a representative who communicates policy information and concerns of the Tribes in that area with NIHB. Whether Tribes operate their entire health care program through contracts or compacts with IHS under Public Law 93-638, the Indian Self-Determination and Education Assistance Act ("ISDEAA"), or continue to also rely on IHS for delivery of some, or even most, of their health care, NIHB is their advocate

[2] 77 Federal Register 70584.

improve access in these locations or not, but we admit to a measure of concern. We urge that as these and other rules are considered that ensuring meaningful and competitive access to health insurance coverage in all locations in every state be a benchmark against which the proposed rules are measured.

Rating for Tobacco Use.

We appreciate the discussion of the methods by which health insurers may permissibly rate premiums based on tobacco use and how "tobacco use" should be defined and information about it collected from applicants for insurance.[3] We share the concern about the absence of a uniform definition of "tobacco use." We also agree that the definition should be consistent with how the term may be applied for the purposes of sections 2701 and 2705(j) of the Public Health Service (PHS) Act and appreciate the opportunity to comment on the definition. We note that a number of options are suggested: self-reported, defined amounts of use during a set-period, regular use as opposed to infrequent or sporadic, or based on addiction. Whichever definition is used, we believe it is important that it include an express exemption for religious and ceremonial use of tobacco. In many American Indian cultures tobacco is used for religious and ceremonial purposes. Such uses should not trigger a higher rating. Moreover, whether the single streamlined application is used to capture the data about tobacco use, or some other vehicle is used, it is important that the person filling out the form be given the information that such uses are not included in the definition of "tobacco use," otherwise the applicant may erroneously be determined to be a tobacco user when it is used solely for religious or ceremonial purposes.

Thank you again for providing an opportunity to comment on these proposed rules. Please contact Jennifer Cooper, NIHB Legislative Director at jcooper@nihb.org if you would like to discuss the issues addressed in this comment or other issues regarding their application to or effect on American Indians or Alaska Natives.

Sincerely Yours,

Cathy Abramson

Chairperson, National Indian Health Board

Cc: Gary Cohen, Deputy Administrator CMS and Director CCIIO
Pete Nakahata, CCIIO
Kitty Marx, Director, CMS Tribal Affairs Group
Dr. Yvette Roubideaux, Director, Indian Health Service

[3] 77 Federal Register 70595-97.