

# National Indian Health Board



*Sent electronically via regulations.gov*

October 15, 2013

Department of Health and Human Services  
Centers for Medicare & Medicaid Services  
Office of Strategic Operations and Regulatory Affairs  
Division of Regulations Development  
Room C4-26-05  
7500 Security Boulevard  
Baltimore, Maryland 21244-1850

**RE: Comment letter on CMS 10416, Blueprint for Approval of Affordable Health Insurance Marketplaces**

I write on behalf of the National Indian Health Board<sup>1</sup> (NIHB) in response to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501-3520) notice CMS10416, published in the Federal Register, Vol. 78, No. 159, Friday, August 16, 2013, page 50060, regarding Blueprint for Approval of Affordable Health Insurance Marketplaces.

Previously there was a single application form for states to use when they applied to operate a state-based Exchange or a Partnership Exchange. The proposed new form creates separate data collection tools for State-based Marketplace, State-based SHOP, and State Partnership Marketplace. The new approach is web-based and allows states to upload supporting documentation to demonstrate their operational readiness. We have reviewed the draft Form Number: CMS-10416 (OCN: 0938-1172), which includes three separate applications.

---

<sup>1</sup> 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.



## State-based Marketplace Blueprint Application

Tribal consultation is included in Section 2, Consumer and Stakeholder Engagement and Support. Question 2.2 (page 6) asks states that have federally-recognized Tribes to demonstrate that the Marketplace has a tribal consultation policy and process. The tribal consultation policy is to be uploaded and the Marketplace can indicate whether this is a draft or final policy. Next, Question 2.2b states, “The Marketplace has made available tribal consultation schedules, agendas, and outcomes and/or next steps resulting from tribal consultation sessions (to be updated quarterly).” Again, materials are to be uploaded to demonstrate that activities have occurred.

We are pleased to see that the application asks not only for a Tribal Consultation Policy, but also for evidence that the policy has been used to engage Tribes in decision making. We are especially pleased that there is an expectation of outcomes and next steps from the Tribal Consultation process, and that this is an on-going process that is reported on a quarterly basis. This goes a long way toward implementation of the letter from Secretary Sebelius to all State Governors sent on September 14, 2011, which addresses the responsibility of States to consult with Tribes in the development of Health Insurance Exchanges. The letter states that “Tribes should be considered full partners by States during the design and implementation of programs . . .” and urges States to “proactively include and partner with Tribes during the planning stages.”

At the same time that the form suggests that this is an on-going process, there are aspects of the form that contradict this assumption. For example, the state is expected to indicate a date by which the consultation activity has been completed or it expects to complete the activity. The form provides an HHS Benchmark of August 1, 2013, for completion of this activity; however, it is not clear how the benchmark is intended to be used. At the bottom of page 6, there is a summary statement for Question 2.2 where the “State attests that this activity is complete (Y/N).” While this follows the format for questions in all the section, it also appears to undermine the idea that Tribal Consultation is needed prior to the application, during the planning process, and during implementation.

Question 2.3 (page 7) concerns Outreach and Education. We are pleased to see that the statement of expectations for the state-based Marketplace includes the following wording:

The Marketplace provides culturally and linguistically appropriate outreach and educational materials to the public. . . Outreach and education materials address eligibility and enrollment options, program information, benefits, and services available through the Marketplace, the Insurance Affordability Program(s) and the SHOP. In addition, the Marketplace has an outreach plan for populations including: . . . Federally recognized tribal communities. . .”

Question 2.3a takes this further to state the Marketplace will develop an outreach and education plan for tribal communities (among others) and metrics and criteria for assessing marketing efforts. We urge CMS

to assure that the metrics proposed by the state include outcomes for enrollment in relation to enrollment objectives for specific population groups, including American Indians and Alaska Natives.

We hope that CMS will review the tribal consultation agendas and outcomes in question 2.2 to assure that the state engaged in tribal consultation in development of their outreach and education plan for tribal communities in question 2.3, including materials that address the special benefits and protections for American Indians and Alaska Natives in the Marketplace and Insurance Affordability programs. However, we also note that outreach and education is only one of many areas in which tribal consultation will provide better outcomes for AI/AN and the I/T/U.

#### State Partnership Marketplace Blueprint Application

We note that the Partnership application organized and presented in a manner consistent with the State-based Marketplace application, with the exception that certain sections are considered not applicable for the Partnership. Essentially, states may choose to take on Consumer and Stakeholder Engagement and Support and/or Plan Management in the Partnership.

With regard to Consumer and Stakeholder Engagement and Support, if a state elects to conduct Outreach and Education activities, and if that state has Federally-recognized Tribes, then there is an expectation that there will be a Tribal Consultation policy and process and the application expects the state to answer questions for 2.2, 2.2a, 2.2b, 2.2c, 2.3, 2.3a, and 2.3b (pages 48-49) that are the same as those in the State-based Marketplace application. Our comments in the above section on the State-based Marketplace application apply here as well.

However, if a state does not elect to conduct Outreach and Education, and only elects to do Plan Management, the expectations are somewhat confusing. Item 2.2 (page 48) states in part:

If not electing to conduct outreach and education activities, the State Partnership Marketplace participates in the Federally-facilitated Marketplace (FFM) tribal consultation process related to applicable and relevant activities and functions of the State Partnership Marketplace.

In the past, we have not seen states participate in the FFM tribal consultation process and we do not understand what that entails. Furthermore, if a state has received Establishment Grant funding to plan their state-based Marketplace or Partnership, then they should have an Exchange Tribal Consultation policy and they should be implementing it.

We want to underscore the importance of Tribes being involved in planning and implementation of all aspects of the Marketplace, not just outreach and education. For example, the I/T/U is affected by decisions made in Plan Management related to such things as use of the Indian addendum for provider contracts, network adequacy and payment by the federal government for cost sharing reductions. State-based Exchanges that have included tribal representation on all of their workgroups, or created a special Tribal workgroup, have designed Marketplaces that work much better in relation to the I/T/U and serving AI/AN.

CMS keeps trying to put Tribal issues under the umbrella of consumer and stakeholder engagement, but the policy issues are much broader than the outreach, education and enrollment topics that are typically on the agenda for consumer engagement. Specifically, there are issues related to the distinctive Indian health care delivery system, and the I/T/U providing services and getting paid for those services.

State-based Small Business Health Options Program (SHOP) Only Marketplace Blueprint Application

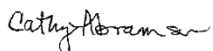
The State-based SHOP application is organized in the same way that the other two applications are organized and the expectations for Tribal Consultation are provided in items 2.2, 2.2a, 2.2b, 2.3, 2.3a, 2.3b consistent with the State-based Marketplace. Our comments provided on these items in the section of the letter on State-based Marketplace also apply here.

Summary

We believe that CMS is using the application forms to make Tribal Consultation a consistent expectation for states that receive federal funding to establish individual Marketplaces, Partnerships and SHOPS. The effectiveness of this approach will depend in large part on the manner in which the documents provided with the application are reviewed by CMS and additional guidance is provided to those states that are not engaging in a meaningful planning and implementation process with the I/T/U as partners. It is essential for CMS to continue to have an open and on-going communication with Tribes and the I/T/U to know what their experience is working with the state, and not just rely on the information submitted by the state with the application.

Thank you for the opportunity to comment on the proposed form. If you have any questions, please contact Jennifer Cooper at [jcooper@nihb.org](mailto:jcooper@nihb.org).

Sincerely,



Cathy Abramson

Chair, NIHB