

National Indian Health Board



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September 20, 2013

Ms. Marilyn Tavenner
Administrator
Centers for Medicare & Medicaid Services
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Dr. Yvette Roubideaux, M.D., M.P.H.
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Mr. Gary Cohen
Deputy Administrator and Director
The Center for Consumer Information and
Insurance Oversight (CCIIO)
Center for Medicare and Medicaid Services
P.O. Box 8010
Baltimore, MD 21244-08010

RE: Recommendations on Options for Implementing Hardship Exemptions from the Affordable Care Act (ACA) Tax Penalty for I/T/U Users and IHS-Eligible Individuals

Dear Ms. Tavenner, Mr. Cohen and Dr. Roubideaux:

On behalf of the National Indian Health Board¹ (NIHB), we are writing in regards to the proposed options for implementing the hardship exemption for people who are eligible for the Indian Health Service (IHS). This includes two groups:

1. Individuals who have used Indian health providers, such as the IHS, Tribally-operated facilities, and Urban Indian clinics (I/T/U); and,
2. Individuals who are eligible, but who have never registered to receive health services.

¹ Established over 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.

This letter identifies options for issuing hardship exemptions from the tax penalty to the first group of individuals who have used I/T/U facilities. Individuals who have used the I/T/U facilities are in the electronic registration database, which are predominantly the Federal Resources and Patient Management System (RPMS). IHS and Tribal facilities report these data routinely, and the data is aggregated at the IHS National Data Warehouse (NDW).

I/T/U facilities that use a different registration system submit information to the IHS NDW, in which a report can be generated on nearly all I/T/U users. IHS funding mechanisms create an incentive for all Indian health programs to report all patients who have registered for services. Whether individuals go to their I/T/U clinic to get a printed document that says they are a user, or the IHS mails a document to each user that they can then submit to the Exchange as documentation for a hardship exemption, or the Center for Consumer Information and Insurance Oversight (CCIIO) contractors check a report generated by IHS with a list of users, all of the documentation derives from the same essential source: the I/T/U patient registration system. **There is no other source, no better source, and no more valid source than the RPMS database.**

Comments made by CCIIO representatives have suggested that patients may have other documents from using I/T/U facilities. The implication is that they may have something like bills or benefit statements that show they have used Indian health services. However, as a general practice, IHS and Tribally-operated clinics do not bill American Indians and Alaska Natives (AI/AN) for services provided and they do not issue explanation of benefits (EOBs). CCIIO participants on the September 10th Tribal Consultation teleconference also suggested that people could present the same documentation to CMS as they presented to the I/T/U for eligibility determination. This is problematic for several reasons:

- Many people are enrolled as patients in the IHS and Tribal health care delivery systems when they are born in IHS or Tribally-operated hospitals. If their parent was an IHS beneficiary, then the baby becomes an IHS beneficiary without further documentation needed. To obtain a medical record of the birth from the hospital is more difficult than obtaining other types of documentation.
- Many people cannot put their hands on birth certificates and marriage certificates. To obtain that documentation, they must apply to the state office that keeps official records. That often includes a fee and a waiting time that can create barriers for submitting this type of documentation to CCIIO. In some cases, people are born at home and there is no birth certificate. In other cases, the place where birth certificates, marriage certificates, or baptism records are kept has burned down or been flooded, destroying the records.
- If individuals submit the documentation of eligibility after they have already been determined eligible, then there is a duplication of effort by the federal government. The federal government may end up paying as many as four different organizations to decide the same person's qualifications as AI/AN, including the Bureau of Indian Affairs (BIA) or a Tribe to issue a Certificate of Indian Blood, a Tribe to issue an enrollment card, the IHS or a Tribe to determine eligibility, and a contractor to re-determine eligibility.

The Tribal Consultation teleconference held on September 10, 2013 mentioned that IHS is composing a form or letter that the I/T/U can issue to individuals as documentation for the hardship exemption. Requiring individuals to obtain documentation at the local level will be costly for underfunded I/T/U facilities that are not likely to receive any funding to assist in the hardship exemption application process. To illustrate, this approach likely would involve the following steps and actions:

- Individuals would go to their I/T/U clinic (including arranging transportation and possibly taking time off from work);
- I/T/U clinic staff would check the Resource and Patient Management System (RPMS) the same data that are available nationally through the NDW), print out a letter (incurring costs for staff time, paper, ink), and hand the letter to the applicant;
- The applicant must then find an envelope, pay for postage, and take it to the Post Office to mail it; and
- Once received by the contractor, there is the expense to pay people to open envelopes and scan documents for as *many as a million people or more*.

However, none of this is necessary and none of this will produce different or better results than transmitting the information directly from IHS to CCIIO.

As you know, the Tribal Self Governance Advisory Committee (TSGAC) has proposed an approach² to use the IHS RPMS database as part of the federal data hub. We have been informed that is not going to happen in the first year of implementation of the Exchanges. Therefore, we are offering three short term options for issuing hardship exemption certifications for I/T/U users that do not rely on the federal data hub.

Option 1: Permit self-attestation of eligibility with IHS-eligible individuals mailing paper form to the Exchange without verification unless the individual is selected by the Internal Revenue Service (IRS) for an audit.

The contractor can compare the Tribe listed on the application to the Department of the Interior list of federally-recognized Tribes, similar to the way that the contractor will compare the application of people with religious conscience exemption to the Social Security Administration list of religious organizations that are exempt.

Option 2: Allow IHS to apply on behalf of all users in the database by providing a report (preferably electronic, but could be a printed version) to CCIIO with the basic information needed for a hardship exemption for each individual who has registered as a patient at I/T/U facilities.

- a. IHS issues a report in electronic (or printed) format that includes the information required for a hardship application and certifies that the individuals on the list have registered as patients at an I/T/U facility.
- b. CCIIO automatically assigns hardship exemption certificate numbers to all individuals on the IHS enrollment data base report and transmits those numbers to IRS.
- c. CCIIO mails confirmations of hardship exemption certificate numbers to all individuals on the IHS enrollment data base report.
- d. Individuals may contact the Call Center to check and see if a hardship exemption number has been assigned and to obtain that number to put on their tax form.
- e. This approach would qualify people for an IHS-eligibility hardship exemption, including many who may also qualify for the exemption under the Affordable Care Act (ACA) definition of Indian. When those individuals submit evidence that they are an enrolled member of a federally-recognized Tribe or a shareholder in an Alaska Native Claims Settlement Act (ANCSA) regional or village corporation, they

² TSGAC report, Electronic Verification of Eligibility for Indian-specific Benefits and Protections, August 27, 2013.

could also receive the exemption for members of federally-recognized Tribes (and the hardship exemption could be withdrawn if holding both exemptions at the same time is not possible.)

Option 3: Apply in writing or through the Call Center with verification using an electronic (or printed) report provided by IHS to CCIIO based on the IHS user data base.

- a. Individuals use paper form attesting to eligibility for the hardship exemption and mail form to the Exchange, or initiate the process via the Call Center.
- b. IHS provides electronic or paper report of I/T/U users to CCIIO.
- c. Contractors check application against IHS report to verify that applicant is an IHS user and issues hardship certificate number, transmits it to IRS, mails a confirmation to the individual, and provides a report to Call Center.
- d. If an individual does not show up on the IHS registration report, then the contractor notifies them that additional documentation is needed. After the person submits the additional documentation, the CCIIO contractor issues hardship certificate number, transmits to IRS, mails a confirmation to the individual, and notifies IHS so that they can add the individual to their list of people who are eligible to be beneficiaries.

Questions have been raised about whether the existing data sharing agreements between IHS and CMS are sufficient for IHS to share an electronic or printed report that has all of the elements that are required for hardship exemption verification. A recent report from the Government Accounting Office (GAO)³ states:

"Under the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, a government agency administering a government program providing public benefits, such as a state Medicaid agency, may disclose individually identifiable health information relating to the program to another government agency administering a government program providing public benefits, such as IHS and Tribal health facilities, if the programs serve the same or similar populations and the disclosure of the information is necessary to coordinate, or to improve the administration and management of, the programs. See 45 C.F.R. § 164.512(k)(6)(ii).

It is our understanding that contractors will be subject to contract provisions that include HIPAA protections. Furthermore, the type of report that we envision would have no medical information included. It would most likely include name, address, birth date, and Social Security number. It is likely that there may be some incomplete matches (for example, names that have been changed, or typographical errors), but the regulations have already anticipated these types of situations and it is possible to use probabilistic software for data matching records that are not an exact match. *We urge IHS and CMS to work together to overcome any obstacles for sharing this type of information.*

We recognize that the options outlined in this letter will only serve a portion of the population who are entitled to the hardship exemption. However, we believe that this is the group that is most likely to apply in the beginning and this comprises the largest proportion of people who will be eligible. The second group of

³ Government Accounting Office, "INDIAN HEALTH SERVICE: Most American Indians and Alaska Natives Potentially Eligible for Expanded Health Coverage, but Action Needed to Increase Enrollment," September 2013, page 37, Footnote 71.

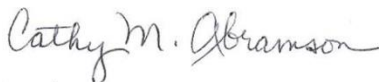
individuals who are eligible, but have never used the I/T/U facilities (and therefore are not represented in the RPMS database) present a different set of issues. A fundamental question we have is who is responsible for deciding eligibility for IHS services (e.g. IHS? Tribes? Exchanges? CCIIO contractors?); and, once that eligibility decision has been made for tax purposes, is it binding on the I/T/U to provide services to those individuals deemed eligible? This is a much more difficult task than verifying eligibility for the hardship exemption for people who have already been determined eligible for IHS.

Our suggestion is for CMS and IHS to move quickly to implement the options outlined in this letter that use the IHS RPMS database. The options meet the standards for using electronically accessed data bases that are: (1) sufficiently accurate; and, (2) offer less administrative complexity. After we have agreed on an approach to accomplish those goals, then we should take up the issue of how to deal with people who are not in the IHS RPMS database. That may require a lot more discussion and time for Tribal consultation.

Finally, in the Tribal Consultation teleconference on September 10th, Mr. Walker mentioned that CCIIO was considering issuing one tax exemption certificate number per household that files taxes together. We strongly urge CCIIO to reconsider this approach and instead issue a separate exemption certificate number for each individual. The AI/AN statutory exemption and most of the IHS-beneficiary hardship exemptions are intended to be issued once in a lifetime. However, family structures change, people get married and divorced, and children grow up and leave home. It would seem that if one person in the household changes their status, then the entire household would have to reapply for a certificate of exemption. It would be cleaner for each person to have an exemption number, just as each person has a Social Security number.

In closing, we thank you for considering these practical and economical approaches that are consistent with the CMS Exchange regulations. As always, we stand ready to assist you in the implementation process. Please feel free to contact Jennifer Cooper, jcooper@nihb.org, if you have any questions. Thank you.

Sincerely,



Cathy Abramson
Chairperson, NIHB

cc:

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