

Tribal Technical Advisory Group

To the Centers for Medicare & Medicaid Services

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Submitted via: www.regulations.gov

June 15, 2015

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-3311-P
P.O. Box 8013
Baltimore, MD 21244-8013

Re: TTAG Comments on Proposed Rule for Stage 1 and 2 Meaningful Use, “Medicare and Medicaid Programs; Electronic Health Record Incentive Program— Modifications to Meaningful Use in 2015 through 2017 (CMS-3311-P; RIN 0938-AS58)

To Whom It May Concern:

On behalf of the Tribal Technical Advisory Group (TTAG) to the Centers for Medicare and Medicaid Services (CMS), I write to provide the following comments in response to CMS’s Proposed Rule that would make changes to Stage 1 and Stage 2 of the Medicare and Medicaid Electronic Health Records (EHR) Incentive Programs (CMS-3311-P) (the Proposed Rule).

The TTAG advises CMS on Indian health policy issues involving Medicare, Medicaid, the Children’s Health Insurance Program, and any other health care programs funded (in whole or part) by CMS. In particular, TTAG focuses on providing policy advice to CMS regarding improving the availability of health care services to American Indians and Alaska Natives (AI/ANs) under these Federal health care programs, including through providers operating under the health programs of the Indian Health Service (IHS), Indian Tribes, tribal organizations, and urban Indian organizations (referred to as I/T/Us, Indian health care providers, or IHCPs).

As a general matter, the TTAG supports the flexibility CMS has adopted in developing its regulations to administer the EHR Incentive Program, and supports CMS’s efforts to simplify the Program in the Proposed Rule. As we discussed in the comments we submitted on CMS’ Proposed Rule for Stage 3 EHR, (CMS-3310-P), however, CMS must administer these rules in a manner that accounts for and recognizes the unique attributes of the Indian health system.

The Indian Health Service, tribes and tribal organizations, and urban Indian organizations (I/T/Us), are justifiably concerned that the downward payment adjustments that will begin for the EHR Incentive Program in 2015 will result in reductions in payments for many I/T/U which have not received additional appropriations to meet the new requirements. The Indian health system is already chronically underfunded, and downward payment adjustments will only make it more difficult for I/T/Us to achieve meaningful use. Application of these downward payment adjustments without any accommodations or exceptions to account for the funding disparities in the Indian health system would be inconsistent with the federal trust responsibility.

Accordingly, the TTAG believes that I/T/Us should be granted a permanent exception to the reporting rules. While we support the flexibility CMS has proposed in its proposed changes to Stage 1 and Stage 2 of the EHR Incentive Program, the majority of I/T/Us would qualify for many of the hardship exceptions in the Program. Should CMS be unable to grant I/T/Us such an overall hardship exemption, we urge CMS to finalize the Proposed Rule and administer the program in such a way that accounts for the unique hardship that will result for I/T/Us seeking to meet the requirements of the rule.

For example, the TTAG supports CMS' proposal to modify the reporting periods and timelines for 2015 and 2016. The Proposed Rule would streamline the reporting process and align it with CMS's proposed Stage 3 rule by establishing calendar year reporting. The TTAG supports this proposal, as it would align reporting periods for other CMS quality reporting programs such as the Physician Quality Reporting System (PQRS) and allow for a single attestation period.

The TTAG also strongly supports CMS's proposal to allow all providers to report on any continuous 90-day period in 2015, and in 2016 to allow providers demonstrating meaningful use for the first time to report on any continuous 90-day period.

The TTAG supports the Proposed Rule's effort to simplify Stage 1 and 2 of the EHR Incentive Program, which would be consistent with CMS's proposed changes to the Stage 3 rules. The Proposed Rule would allow providers attest to a single set of modified Stage 2 objectives for 2015 through 2017, and would provide accommodations for Stage 1 providers. The streamlining of reporting measures accommodation for Stage 1 providers will be critically important for many I/T/Us for whom meeting meaningful use is a challenge.

The TTAG supports the exclusion for clinics located in a county that does not have 50% or more of their housing units with 4Mbps broadband availability in the patient electronic access to health information objective. Most, if not all of IHS and tribal health programs may meet this exception. In addition, many of the beneficiaries served by I/T/Us lack the technological resources required to access electronic health records. As a result, developing patient access measures for patients without the ability to access such records makes little sense for many tribal health programs. As a result, the TTAG recommends that CMS issue a blanket exception for these requirements.

The TTAG also recommends that CMS issue a blanket exemption for I/T/Us for the electronic prescribing objective and measure. The Proposed Rule retains the rule that allows eligible professionals to exclude this objective if no pharmacies within 10 miles accept electronic prescriptions. Because the majority of I/T/Us would qualify for this exclusion, we suggest that CMS issue a blanket exclusion for I/T/Us for this measure.

Finally, the Proposed Rule would allow states to determine the means of transmission of data and otherwise change the public health reporting objective and measures. Tribal health systems should be granted the same authority, which is consistent with the government-to-government relationship between tribes and the federal government.

The TTAG appreciates the opportunity to provide comments on the Proposed Rule, and remains fully supportive of CMS's efforts to streamline and simplify the EHR Incentive Program. The TTAG remains concerned, however, that many I/T/Us and providers working in the Indian health system simply lack the resources required to meet many of these measures, which were developed by CMS with the non-I/T/U health system in mind. We therefore urge CMS to consider the unique challenges faced by I/T/Us in meeting these new criteria as CMS moves forward with finalizing these rules and implementing the program, and ask that CMS continue to consult with the TTAG and with tribes on this program as it moves forward.

Sincerely,

A handwritten signature in black ink that reads "W. Ron Allen". The signature is written in a cursive, flowing style.

W. Ron Allen
Tribal Chairman and CEO, Jamestown S'Klallam Tribe
Chairman, TTAG

Cc: Kitty Marx, Director, CMS Division of Tribal Affairs