Submitted via e-mail: CMMI_NewDirection@cms.hhs.gov

November 20, 2017

The Honorable Seema Verma,
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services Attention: CMS-1676-P
P.O. Box 8016
Baltimore, MD 21244–8013

RE: Centers for Medicare & Medicaid Services: Innovation Center New Direction

Dear Administrator Verma:

On behalf of the National Indian Health Board, I write to submit comments on the request for information entitled: Centers for Medicare & Medicaid Services: Innovation Center New Direction.

Established in 1972, the 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 (AI/ANs). The 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 the 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, the NIHB is their advocate.

We appreciate the opportunity to provide comments and commend CMS for approaching new model designs but we also remind CMS of its trust responsibility to American Indians and Alaska Natives. We request that CMMI work with Tribes to develop new innovations around service delivery and payment reform but we also remind CMS that any burdensome requirements must hold harmless the Indian health system.

Background

The United States has a unique legal and political relationship with American Indian and Alaska Native Tribal governments established through and confirmed by the United States Constitution, treaties, federal statutes, executive orders, and judicial decisions. Central to this relationship is the Federal Government's trust responsibility to protect the interests of Indian Tribes and communities, including the provision of healthcare to American Indians and Alaska Natives.
Congress has passed numerous Indian-specific laws to provide for Indian health care, including establishing the Indian health care system and permanently enacting the Indian Health Care Improvement Act (IHCIA).[1] In the IHCIA, for instance, Congress found that "Federal health services to maintain and improve the health of the Indians are consonant with and required by the

[1] 25 U.S.C. § 1601 et seq

Federal Government's historical and unique legal relationship with, and resulting responsibility to, the American Indian people."[2] Congress also enacted the Indian Self-Determination and Education Assistance Act of 1975 to enable Tribes and Tribal Organizations to directly operate health programs that would otherwise be operated by the Indian Health Service (IHS), thereby empowering Tribes to design and operate health programs that are responsive to community needs. Title V of the Indian Health Care Improvement Act authorized federal funding for urban Indian organizations to provide health services to AI/ANs, many of whom had been relocated to urban areas by federal relocation programs. Together, this complex healthcare system is often referred to as the "I/T/U" (IHS/Tribal/Urban) or Indian health system.

The I/T/U system utilizes a community-based public health model with many approaches that are not found in typical American medical delivery systems. For example, Indian health programs include public health nursing, outreach workers, prevention services, and even building community water and sanitation services. Many Indian health programs have pioneered new types of providers, such as community health aides and dental health aide therapists, as well as new approaches to delivering services in remote rural areas, including telehealth. Tribal governments manage a wide range of services, such as substance abuse treatment, the U.S. Department of Agriculture nutrition programs for pregnant women, infants and children, Senior Centers and elder nutrition sites, rabies vaccinations, and injury prevention programs, to name just a few. Tribal programs tend to take a more holistic view. As a result, over the past decades, Tribes have successfully crafted their own health systems that are innovative and deliver high quality care.

As the Center for Medicare and Medicaid Innovation moves forward with new opportunities, it is imperative that Tribes be included as partners in the development of innovative health care payment and service delivery models and that they be held harmless to meeting any potentially burdensome requirements that are not consonant with the federal trust responsibility to provide health care to AI/ANs.

Tribal Consultation

The Federal government's trust responsibility provides the legal justification and moral foundation for Indian specific health policymaking—with the objectives of enhancing their access to health care and overcoming the chronic health status disparities of this segment of the American population. Under the CMS Tribal Consultation Policy, CMS is to consult with Tribes throughout all stages of the process when developing any new policy that would impose substantial compliance costs on Indian Tribes.[3] Moreover, CMS shall:

- Encourage Indian Tribes to develop their own policies to achieve program objectives;
- Where possible, defer to Indian Tribes to establish standards; and,
- In determining whether to establish federal standards, consult with Tribal officials as to the need for federal standards and any alternatives that would limit the scope of federal standards or otherwise preserve the prerogatives and authority of Indian Tribes.[4]

Indian health care programs are unique. Tribal health programs implement the United States' trust responsibility to provide health care services to AI/ANs.[5] The IHS is the primary federal agency

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[2] *Id.* § 1601(1)

[3] Centers for Medicare & Medicaid Services, Tribal Consultation Policy § 5.7 (Dec. 10, 2015).

[4] *Id.* at § 5.6.

[5] *See, e.g.*, 25 U.S.C. § 1601 ("Federal health services to maintain and improve the health of the Indians are consonant

tasked with carrying out this responsibility; however, the federal trust responsibility extends to every branch of the federal government and to every Executive Department and agency, including CMS. CMS must not abdicate its trust responsibility by failing to account for the unique needs of the Indian Health system as it finalizes and implements this rule. The trust responsibility requires that the federal government assist I/T/Us in meeting the highest standards for efficiency and quality of patient care.

Conclusion

NIHB Tribes stand ready to work with CMS to develop new innovations around payment reform and service delivery. As CMMI works to develop new initiatives, CMS must continue to work with Tribes and hold harmless the I/T/U system from any burdensome requirements. We thank you for this opportunity to provide our comments and recommendations and look forward to further engagement with CMS on this important proposed rule.

Sincerely,

Vinton Hawley,
Chairman, National Indian Health Board

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

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with and required by the Federal Government's historical and unique legal relationship with, and resulting responsibility to, the American Indian people."); The White House, *Memorandum for Heads of Executive Departments and Agencies re: Tribal Consultation* (Nov. 5, 2009), https://www.whitehouse.gov/the-press-office/memorandum-Tribal-consultation-signed-president.