

Tribal Technical Advisory Group

To the Centers for Medicare & Medicaid Services

c/o National Indian Health Board 910 Pennsylvania Avenue, SE Washington, DC 20003 (202) 507-4070 (202) 507-4071 fax

March 31, 2020

Mr. Calder Lynch, Deputy Administrator & Director
Center for Medicaid and CHIP Services
Centers for Medicare & Medicaid Services
Department of Health and Human Services
200 Independence Ave SW
Washington, DC 20101

Re: Extend clinic “four walls” enforcement grace period one year

Dear Mr. Lynch

We trust all is well with you, family and the Centers for Medicare and Medicaid Services (CMS) team during these challenging COVID-19 times. On behalf of Tribal Technical Advisory Group (TTAG), I ask that CMS immediately extend for one year the Medicaid clinic “four walls” enforcement grace period that would otherwise end on January 30, 2021. Additional time is needed because neither State Medicaid agencies nor Tribal health programs can afford to take time away from their urgent responses to the COVID-19 public health emergency in order to address the four-walls issue at this time.

As you know, to mitigate the impact of its determination that the Medicaid “clinic” benefit does not apply to services furnished outside the clinic facility, and that Tribal providers therefore may not be paid the clinic rate for such services, CMS is allowing States to adopt State Plan Amendments (SPAs) to reimburse Tribally-operated FQHCs at the clinic rate and – to allow sufficient time for states and Tribes to “make [any required] legislative or regulatory policy changes, provide public notice, define services, make system changes, and potentially make programmatic and staffing changes” – CMS announced that it will not review claims for compliance with the four-walls restriction before January 30, 2021.¹ Given the pandemic, however, there is not sufficient time or resources for Tribal health and policy staff to effectively engage with the states on this. More time is needed to make those changes, and the enforcement grace period should be extended accordingly.

During this COVID-19 public health emergency, State Medicaid agencies are scrambling to implement system and state regulation changes related to relief granted through 1135

¹ See SHO #16-002, Federal Funding for Services “Received through’ an IHS/Tribal Facility and Furnished to Medicaid-Eligible American Indians and Alaska Natives, <https://www.medicaid.gov/federal-policy-guidance/downloads/SHO022616.pdf>; January 18, 2017 “Frequently-Asked Questions (FAQs)” regarding the same, Answer 13, <https://www.medicaid.gov/federal-policy-guidance/downloads/faq11817.pdf>

and 1115 waivers and 1915k amendments, and to deal with the dramatic increase in Medicaid enrollment by individuals who have lost their income due to COVID-19 business closures and “shelter-in-place” orders. The agencies’ plates are already overflowing, and those that have not already implemented a Tribal FQHC SPA simply do not have the time, resources, or personnel to do so at this time or in the immediately foreseeable future. Nor is this the time – when States are seeking emergency permission to cover services furnished in non-traditional settings in response to the COVID-19 – to require Tribal programs to phase out their off-site services or to divert attention from the urgent matters at hand.

While we know you are extremely busy at this time, we would appreciate a timely response as soon as you are able. And please do not hesitate to contact us if you have questions or would like to discuss this request.

Sincerely,

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

W. Ron Allen, Chair – Jamestown S’Klallam Tribe
Chair, CMS Tribal Technical Advisory Group

Cc: Carolyn Hornbuckle, National Indian Health Board Chief Operations Officer
Kitty Marx, Director, Division of Tribal Affairs