



Tribal Technical Advisory Group



To the Centers for Medicare & Medicaid Services

c/o National Indian Health Board | 50 F Street NW | Washington, DC 20001 | (202) 507-4070 | (202) 507-4071 fax

February 2, 2024

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Submitted via regulations.gov

Re: Medicaid; CMS Enforcement of State Compliance With Reporting and Federal Medicaid Renewal Requirements Under Section 1902(tt) of the Social Security Act (CMS-2447-IFC)

Dear Administrator Brooks-LaSure:

On behalf of the CMS Tribal Technical Advisory Group (TTAG), I write to provide a response to the Centers for Medicare and Medicaid Services (CMS) interim final rule with comment period (IFC), “Medicaid; CMS Enforcement of State Compliance With Reporting and Federal Medicaid Renewal Requirements Under Section 1902(tt) of the Social Security Act” (CMS-2447-IFC).

The TTAG generally supports this IFC and urges the agency to make it permanent, with some important modifications. This rule clarifies that CMS will impose penalties against a state’s Medicaid program if they are non-compliant with specific reporting procedures when they disenroll Medicaid participants. The most extreme of these penalties is the suspension of the Medicaid disenrollment process. This penalty, to be used when states have engaged in disenrollment in violation of CMS policy, should prevent churn caused by the extreme administrative burden brought on by the confusing and cumbersome eligibility and enrollment processes, and encourage continuous coverage among Medicaid recipients. American Indians and Alaska Natives are particularly impacted by these rules due to the high rate of Medicaid eligibility and enrollment among our communities. Many rural Tribal communities have limited access to resources, including staff needed to conduct outreach and enrollment assistance. This renders the renewal process more difficult to navigate and increases churn.

The rule focuses on CMS’s oversight role regarding state compliance with the reporting and renewal requirements in the Social Security Act. As a result, as might be expected, it does not provide any mechanism for stakeholders to give notice to CMS that there are issues with how the Medicaid redetermination process is occurring within their communities. The TTAG appreciates the outreach and consultation from CMS and the tribal affairs team on Medicaid unwinding and the Medicaid redetermination process. CMS’s commitment to the TTAG Medicaid Unwinding Committee is very much

CMS TTAG Letter to CMS Administrator Brooks-LaSure

Re: CMS-2447-IFC

February 2, 2024

Page 2 of 2

appreciated by all who participate. We are grateful for the efforts of your staff to both keep the TTAG informed, but also to use the Committee as a sounding board for redetermination issues occurring in Indian country. As we have suggested during those meetings, it would be beneficial to have a mechanism where Tribal leaders, Indian health care providers, and Tribal health facility directors could directly report issues up to CMS.

As you know engaging with the TTAG does not constitute Tribal consultation, and while the Tribal representatives on the TTAG do their best to communicate with all of Indian Country, there are many tribes who do not participate directly. As a result, we think that a dedicated email address or portal would be helpful for tribes to communicate redetermination issues directly to CMS. The relationship between Tribes and their state leadership varies greatly, and all Tribes must have the ability to benefit from the same access to CMS to raise concerns and ensure CMS holds their state accountable. Ensuring public participation and/or a whistle blower mechanism is essential to a fair process for enrollees, and essential to ensuring that CMS catches the bad actors who take advantage of the process. Tribal citizens should not be subjected to inaccurate disenrollment from Medicaid simply because their issues and concerns are not being addressed by their state Medicaid agency.

The TTAG would like to request that state Medicaid agencies collect race-specific data so that Tribes and Tribal organizations can receive a breakdown of the data regarding the American Indian and Alaska Native beneficiaries enrolled in Medicaid. Ensuring quality data is available to Tribes is critical to identifying our people who could need assistance in the redetermination process, and for Tribes to hold the state and CMS accountable for the health and well-being of its Tribal citizens.

We appreciate your consideration of the above comments and recommendations and look forward to engaging with the agency further.

Sincerely,

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

W. Ron Allen, CMS TTAG Chair
Jamestown S'Klallam Tribe, Chairman/CEO