



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

April 9, 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: Medicare Program; Strengthening Oversight of Accrediting Organizations (AOs) and Preventing AO Conflict of Interest, and Related Provisions

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) proposed rule, “Medicare Program; Strengthening Oversight of Accrediting Organizations (AOs) and Preventing AO Conflict of Interest, and Related Provisions” (CMS-3367-P).

We ask that the proposed regulations be revised to reflect the fact that Indian health facilities are almost exclusively surveyed by CMS surveyors instead of State Survey Agencies, given their direct government-to-government relationship with the United States. Their right to a direct CMS survey is expressly recognized in formal CMS publications and is closely akin to the exemption from State health facility licensing that is recognized in the Indian Health Care Improvement Act. (See CMS Publication 100-04, the *Medicare Claims Processing Manual*, Chapter 19, Sec. 40.2; Indian Health Care Improvement Act, Pub. L. 94-437, as amended, sections 221 and 408, 25 U.S.C.A. 1621t and 1647.)

As currently drafted, both 488.9 and 489.57 would inappropriately subject Indian health facilities to State surveys and State surveyor oversight without their consent. Section 488.9 provides that “validation surveys” are conducted by state survey agencies without stating an exception for Indian providers. Similarly, section 489.57 would place all terminated providers under “exclusive oversight of the State Survey Agency,” again without stating an exception for Indian health facilities.

TTAG leadership urges that both be amended to say expressly that, for Indian health facilities, these survey and oversight functions will be carried out directly by CMS Surveyors unless the facility expressly requests otherwise.

CMS TTAG Letter to CMS Administrator Brooks-LaSure

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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 style with a large, stylized "W" and "A".

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