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

September 16, 2024

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

Submitted to: Chiquita.Brooks-LaSure@cms.hhs.gov

Re: Follow Up from the July 2024 Centers for Medicare and Medicaid Services Tribal Technical Advisory Group Face-to-Face Meeting

Dear Administrator Brooks-LaSure:

On behalf of the Centers for Medicare and Medicaid Services (CMS) Tribal Technical Advisory Group (TTAG), I write to express our deep gratitude and appreciation for your continued commitment to the top concerns of Indian Country. I have included some of the key issues raised during the July 2024 TTAG Face-to-Face Meeting and look forward to working with you and the rest of CMS to accomplish these health priorities for Indian Country.

I. Medicaid Substance Use Disorder Fraud

For years, bad actors have exploited the American Indian Health Program (AIHP) in Arizona to carry out human trafficking of American Indians and Alaska Natives and fraudulently bill the Arizona Health Care Cost Containment System (AHCCCS) for millions of dollars at substance use disorder rehab and sober centers. This exploitation has caused incredible harm to many Tribal citizens and has placed an enormous amount of strain on Tribal and UIO providers who are working to support victims in their recovery from a deeply traumatic experience.

While we appreciate the state's desire to prevent these horrible crimes from reoccurring, the TTAG is very concerned about potential overcorrection from the state, resulting in the imposition of policies that create increased barriers to care for AI/AN beneficiaries, especially without input from Indian health care providers. For example, to prevent fraudulent providers from falsely registering individuals for Medicaid as American Indian or Alaska Native, AHCCCS is working on a Tribal Verification Plan for enrollment in the AIHP. However, there is significant confusion from both beneficiaries and IHCP employees, who are unaware of this new requirement. They have patients coming in,

asking for evidence that they received (or are eligible for) services at an IHCP or through a referral from an IHCP.

The reality of a Tribal Verification Plan is that it is just another barrier to accessing care that prevent our people from gaining the help they require. Instead of creating ways to connect our people to resources, Arizona is creating ways to prevent them from accessing those resources, thereby exacerbating the issues that cause our people to seek care. CMS must engage directly with AHCCCS to ensure that any proposed changes are only developed through partnership with Indian health care providers and that the state does not unilaterally impose barriers to care upon American Indian and Alaska Native beneficiaries.

In addition, the TTAG requests that CMS work with Tribes, UIOs, and AHCCCS to find ways to provide financial support to address the ongoing effects of these crimes. Many people who are the victims of trafficking because of these schemes are taken far away from their homes. Once fraudulent facilities are shut down, people are left abandoned, homeless, and victimized. Further, despite the work that they are doing to assist fraud victims, Tribal and UIO providers in AZ have not received any financial support from the state to address the issues, nor have they seen any financial support provided to actual victims of the fraud.

Finally, Medicaid fraud is not unique to Arizona, and we are concerned that this scheme may be repeated elsewhere. CMS has stated that this is largely a state issue for Arizona to solve and that the other criminal elements of the fraud are being handled by the Federal Bureau of Investigation (FBI), but this response is leaving our Tribal communities grappling with the outcomes with no resources or help for a solution. CMS ultimately bears the responsibility for the government-to-government relationship with Tribes. CMS must act to not only ensure that Arizona has handled this appropriately and done so in conjunction with Tribes but also has a national responsibility to address the more far-reaching impact of this on AI/AN people and our Tribal communities. Our Tribal leadership requests that CMS coordinate an investigation with the Office of Inspector General (OIG) on this issue. CMS must continually communicate with Tribes and TTAG as it addresses this issue to ensure that CMS is constantly engaging with Indian Country to prevent these harms now and in the future.

II. 1115(a) Demonstration Waivers with Traditional Healing Components

We thank CMS for its efforts to address our requests to find a path to reimburse Indian Health Care Providers for traditional health care practices. The TTAG leadership extends our thanks to CMS for sharing its commitment to include Urban Indian Organizations (UIOs) in the framework for reviewing 1115(a) demonstration waivers with traditional healing components. We appreciate CMS staff for taking the time to connect with UIOs and acknowledge their important role in providing traditional healing services to AI/ANs.

At the July TTAG meeting, Deputy Administrator Dan Tsai shared that CMS intends to review the four pending waivers from Arizona, California, Oregon, and New Mexico in a "bundle." Given that the framework Tribes submitted comments on in early May was particularly high level, we request the CMS give Tribes an opportunity to provide expedited review and input on a full-text version of the framework and CMS's plan for implementing the framework. Timing is a top concern around this issue. As Deputy Administrator Tsai acknowledged at the Face-to-Face Meeting, the waivers with traditional healing components pending approval from CMS have been waiting for a considerable amount of time. Our TTAG leadership would appreciate CMS providing additional details on its estimated timeline for working with Tribal leaders to share a complete framework and for reviewing the pending waivers.

As CMS continues to work on the framework and make progress toward reviewing the pending waivers from Arizona, New Mexico, California, and Oregon with traditional healing components, we reiterate our request from our May comments that the framework should not be so rigid as to prevent demonstrations that take an innovate approach to traditional healing outside of the framework's guidelines.

Traditional healing is essential to Indian health and providing culturally competent care. We emphasize the impact that approving the four pending waivers will have on Indian Country. We look forward to the approval of the four pending waivers from Arizona, New Mexico, California, and Oregon have submitted. These approvals would honor the requests Tribal Nations consulted in the creation of these waivers and, more importantly, it would demonstrate a powerful commitment to a Tribally-led future of Indian health.

III. Four Walls Issue

TTAG leadership applauds CMS for incorporating the TTAG Priority pertaining to the "Four Walls" provision of CMS-1809-P. Thanks to leadership within CMS and their work with TTAG, the proposed rule would, if adopted as currently drafted, allow Tribal and IHS facilities to continue to provide clinic benefit services outside the four walls and bill at the facility rate, which would be the All-Inclusive Rate for Tribal and IHS facilities. This means that AI/ANs can have greater access to care, whether that be in the form of a mobile facility deploying to an area that is more local to rural residents or a child receiving care while at school.

IV. Medicaid Unwinding

TTAG appreciates the guidance CMS issued to states in response to the issues Indian Country identified with state implementation of Medicaid Unwinding, unfortunately, some states have not incorporated this guidance into their operations. This Medicaid Unwinding survey, administered by TSGAC, sought to fill persistent data gaps within state Medicaid programs on Tribal beneficiaries, as well as provide a more direct means for Tribal Nations and organizations to report issues with state programs to CMS. The

survey highlighted the broader issue that the systems for reporting issues to CMS are outdated and insufficient.

Prior to Medicaid Unwinding, often when Tribal Nations or organizations would report issues with a state office, we would be told to resolve the issue at the state level. However, CMS is responsible for upholding the trust and treaty obligations the U.S. owes to Tribal Nations – obligations that are based in our nation-to-nation relationship with the U.S. and cannot be delegated to the states.

As a result, when Tribal Nations and organizations have issues with state Medicaid agencies, we should only have to seek recourse through the federal entity, not through the states. The guidance and requirements CMS issued throughout Unwinding that sought to address the issues Indian Country had identified (such as disproportionately high rates of procedural disenrollments and state non-compliance with prior Unwinding guidance) were a good first step toward a more responsible Tribal-federal process. More work must be done to ensure that the problems that necessitated this survey in the first place are resolved.

TTAG requests that CMS address the recommendations in this survey and work with TSGAC/TTAG to disseminate information about the best practices identified in the survey.

V. Medicare Issues

Medicare Part D Addendum. Thank you for issuing a draft revised Part D Addendum. TTAG appreciates that the draft contains some of the Tribal comments and we appreciate the opportunity to submit additional comments. The TTAG believes the Addendum would be improved with further edits and has submitted comments to this effect. Further, TTAG requests a working meeting with the Part D team to collaborate further on the updates to the Addendum and to emphasize the importance of Tribal proposals.

Medicare Advantage. The TTAG Workgroup addressing Medicare Advantage marketing has reached the stage of collecting examples of predatory practices to assist with creating a frequently asked question document to educate folks on what's happening, how to choose plans that work for enrollees, and who to contact if you need to make a change to your enrollment. We are developing an FAQ document that is intended for Tribal citizens to take into consideration before making changes to their Medicare coverage, so as to avoid the impacts of these predatory practices. We ask that CMS support its development.

Further, Medicare Advantage plans are not reimbursing Indian health care providers at the IHS OMB rates, and often refuse to reimburse at all. Section 206 of the Indian Health Care Improvement Act gives Indian health care providers the right to recover their reasonable costs from certain third parties, including Medicare Advantage plans, regardless of whether they are in-network or not. CMS should require all Medicare

Advantage plans to automatically deem Indian health care providers as in-network for reimbursement purposes, even if they do not enroll in a provider agreement. As a cost-based rate, the IHS OMB rate, at the very least, should be considered "reasonable costs" for purposes of Section 206.

Long-term Care. Tribal long-term care (LTC) facilities receive no funding from the Indian Health Service (IHS) and are nearly entirely dependent on Medicare and Medicaid funding to operate. As a result, if proposed staffing standards are too expensive or not possible to meet due to staffing shortages, Tribal LTC facilities will simply cease to exist, and there will be no more long-term care in our communities. Long-term care facilities operated by Tribes offer culturally appropriate and centered care for our Elders, which is not available at other similar non-Tribal facilities. These facilities are also located in our communities keeping Elders close to their families and loved ones—ensuring the cultural and personal bonds that keep them healthy, enrich our communities, and provide for longer, fulfilling lives. CMS's rule stands to break these bonds by unintentionally shuttering Tribal long-term care facilities. TTAG requests that CMS include a Tribal exemption to the staffing standards rule at the next rulemaking opportunity.

VI. Open Invitation to Indian Country

TTAG leadership would like to remind CMS leadership that they are always invited out to Indian Country to see how our programs work and to see the work we are doing in IHS, Tribal, and Urban Indian facilities to serve our people. We think it would be beneficial for you all to see the challenges we face in many of our clinics and hospitals, so you can better understand our needs and how you can help us. We are thankful for the leadership that has led to the proposed rule containing the Four Walls exemption for Tribes, among other TTAG Priorities. Lastly, we would like to thank you again for your continued engagement with Indian Country and for your support of the TTAG's Tribal health priorities. Our Tribal leadership urges you to continue to work with Tribes and Tribal organizations to advance these priorities and to always consider the unique situation and circumstances of Indian Tribes in the government-to-government relationship and around the delivery of health care in our communities. We look forward to working collaboratively with the agency as we continue to advance the health and well-being of American Indian and Alaska Native people.

Sincerely,

W. Ron Allen

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

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