

IHS TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE

c/o Self-Governance Communication and Education

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Via email: Denise.Turk@ihs.gov

April 15, 2014

Dr. Yvette Roubideaux, M.D., M.P.H.
Acting Director
Indian Health Service
801 Thompson Avenue, Suite 440
Rockville, MD 20852

RE: IHS October 24, 2013 Letter Interpreting Section 402 of the Indian Health Care Improvement Act

Dear Director Roubideaux:

On behalf of the IHS Tribal Self-Governance Advisory Committee (TSGAC), I write in regards to your Dear Tribal Leader Letter (DTLL) of October 24, 2013 addressing Section 402 of the Indian Health Care Improvement Act. This section provides authority for Tribes, Tribal Organizations, and Urban Indian Organizations (T/TO/U) to purchase coverage for beneficiaries, otherwise known as premium sponsorship. We have provided our concerns to you during our most recent TSGAC meetings, the last one being January, 2014. We urge you to either (1) withdraw the October 24, 2013 DTLL for further review; or, (2) amend the DTLL to clarify that financial need is not the only factor that may be considered for these coverage decisions.

Unfortunately, the subject DTLL was issued prior to any Tribal Consultation, where these comments may have been provided in advance. Specifically, the TSGAC has provided feedback to you previously that we believe the IHS interpretation of Section 402 to be over limiting, and thus will preclude T/TO/U from exercising the range of options and flexibility provided by the IHCA.

In your October 4, 2013 letter you stated that, with regard to premium sponsorship:

“...a T/TO/U that wishes to limit the number of beneficiaries covered should be aware that financial need is the only factor permitted by statute upon which to base coverage decisions.”
(Emphasis added.)

Comparatively, the applicable portion of section 402 of the Indian Health Care Improvement Act (IHCA) (as amended by the Affordable Care Act) reads:

“The purchase of coverage under subsection (a) by an Indian tribe, Tribal organization, or urban Indian organization may be based on the financial needs of such beneficiaries...”
(Emphasis added.)

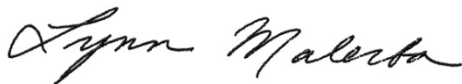
Our plain reading of the language in Section 402 concludes that the IHClA inclusion of financial need as a criterion for coverage was permitted, but not required. The guidance documents and regulations issued by Centers for Medicare and Medicaid Services (CMS), Center for Consumer Information and Insurance Oversight (CCIIO), has been consistent with the Tribal interpretation of Section 402.

In the series of guidance documents and regulations issued on this topic, CMS/CCIIO placed restrictions on other entities (“non-profit foundations” and “hospitals, other healthcare providers, and other commercial entities”), but CMS/CCIIO did not impose these constraints on premium sponsorship conducted by I/T/Us sponsoring premiums, and has not imposed any such restrictions on Tribes, Tribal Organizations or Urbans. The latest action from CMS/CCIIO on this topic was issued as recently as March 15, 2014. We have collected relevant excerpts from CMS/CCIIO guidance documents and regulations that can be provided if they would be helpful.

The Affordable Care Act (ACA), including its amendments to the IHClA, contain many opportunities for IHS and Tribes to gain greater access to care for more American Indians/Alaska Natives and expand resources available to better address the health disparities for our people. We have successfully partnered on many ACA implementation issues, and seek to ensure that IHS, Tribes and Urban Indian programs are able to employ all of the tools that the ACA affords us with the greatest flexibility.

We look forward to further discussion with you at the upcoming TSGAC quarterly meeting later this month. In the meantime, if you have any questions, you can reach me at (860) 862-6192; or via email: lmalerba@moheganmail.com. Thank you.

Sincerely,



Chief Lynn Malerba, Mohegan Tribe
Chairwoman, TSGAC

cc: TSGAC and Technical Workgroup Members
Mr. P. Benjamin Smith, Director, Office of Tribal Self-Governance, IHS
Mr. Carl Harper, Director, Office of Resource Access and Partnership, IHS
Mr. Geoff Roth, Special Assistant to the Director, IHS