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 11, 2025

The Honorable Mehmet Oz
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Submitted via regulations.gov

Re: Patient Protection and Affordable Care Act; Marketplace Integrity and Affordability

Dear Acting Administrator Carlton:

On behalf of the Centers for Medicare and Medicaid Services (CMS) Tribal Technical Advisory Group (TTAG), I write to express significant concerns regarding the proposed rule, Patient Protection and Affordable Care Act (ACA); Marketplace Integrity and Affordability (CMS-9884-P). Given the potential ramifications for American Indian and Alaska Native (AI/AN) beneficiaries, we strongly urge CMS to delay this Notice of Proposed Rule until Congressional reconciliation and Medicaid appropriations are finalized, and impacts can be assessed.

The Indian Health Care Improvement Act (IHCIA), enacted as part of the ACA (P.L. 110-148), established critical provisions ensuring AI/ANs have equitable access to healthcare through special enrollment protections. Congress explicitly recognized its trust and treaty obligations, stating, "[I]t is the policy of this Nation, in fulfillment of its special trust responsibilities and legal obligations to Indians -- to ensure the highest possible health status for Indians and urban Indians and to provide all resources necessary to effect that policy."[1] Any regulatory changes must uphold these statutory protections and avoid undermining the United States' trust and treaty responsibilities. We urge CMS to reconsider provisions that would interrupt healthcare access for AI/AN communities.

PROPOSED REGULATORY CHANGES

1. **Failure to File and Reconcile (FTR) Process (45 CFR § 155.305)**

The proposed amendment to § 155.305(f)(4) would render individuals ineligible for Advance Premium Tax Credits (APTC) if they fail to file and reconcile their taxes for a single year. This may be challenging for AI/AN individuals whose taxes are being processed due to audits or administrative delays. The potential administrative delays within the IRS may impact the

[1] 25 U.S.C. § 1602.

accuracy of data accessible to Exchanges. We urge for the statute to remain as it to protect individuals against administrative delays and misinformation presented to Exchanges.

2. **Income Eligibility Verifications (§ 155.315(f)(7), § 155.320(c)(3)(iii), § 155.320(c)(5))**

The proposal to eliminate the automatic 60-day extension beyond the 90-day period (§ 155.315(f)(7)) for income inconsistencies will harm AI/AN populations residing in rural and remote locations. The 60-day extension is beneficial for AI/AN populations who lack broadband access, mail delivery services, and consistent communication with Exchanges. We urge the 60-day extension to be maintained in the FY 2026 Marketplace.

TTAG leadership is seriously concerned with the proposal to remove § 155.320(c)(5) eliminating the exception allowing attestation acceptance without verification when IRS tax data is unavailable. There have been several brokers who take advantage of AI/AN individuals by refusing to insert an income in the Exchange and instead enroll AI/ANs in a Marketplace plan without the consent of an individual. The broker knowingly opts a qualified individual out of Medicaid forcing an individual to pay an unknown tax credit. CMS should require brokers to be responsible for associated costs that need to be reimbursed like the tax credit or penalties to reduce this form of fraud. In another example, for individuals and families who meet the IRS requirements to not submit taxes, this will complicate enrollment, delay access to care, and increase administrative strain on Exchanges.

TTAG leadership would like to point out that the recognition of AI/AN protections in the maximum annual limitation on cost sharing is misquoted – AI/ANs who receive services at an Indian Health Care Provider or enrolled in any qualified health plan in the individual market are protected from any cost-sharing. We suggest the following red line edit, "under the ACA Section 1402 (d) AI/ANs whose family income is at or below 300 percent of the Federal Poverty Level (FPL) are protected from any cost-sharing under an Exchange plan and allows AI/ANs who receive services at a Indian Health Care Provider (IHCP) or any qualified health plan in the Exchange to be protected from any cost-sharing regardless of income." This edit upholds language set forth in ACA Section 1402 (d).

3. **Annual Eligibility Redetermination and Automatic Reenrollment (45 CFR § 155.335)**

The TTAG leadership is concerned with the proposal requiring enrollees to pay $5 monthly fee if an individual fails to confirm or update the eligibility determination and fail to make payment on a premium amount due. If an enrollee is in delinquency, then additional fines will place additional financial burden on enrollees. Instead of imposing punitive fees, CMS should explore alternative strategies to encourage timely payment on premiums.

Another proposal that will create additional administrative strain is the proposal to end automatic enrollment from bronze to silver for individuals who apply for APTC. The TTAG leadership supports the current federal standards that allow the bronze to silver crosswalk within the same provider network. This protects individuals who do apply for ATPC.

4. Premium Payment Thresholds (45 CFR § 155.400)

It will be harmful to consumers to revise § 155.400(g) requiring enrollees to pay a fixed-dollar or gross percentage-based premium payment to remain enrolled. This proposal could force individuals into sudden disenrollment due to minor payment discrepancies. In its current form, the premium payment threshold allows delinquency for a period of time that allows for continued coverage. While there should be an incentive to reduce improper activity, placing flexible payment threshold policies onto agents, brokers, or web-brokers assumes these agencies will offer a generous premium policy threshold. It would be better for CMS to continue offering the generous premium policy threshold to protect consumers.

5. Annual Open Enrollment Period (OEP) (45 CFR § 155.410)

Shortening the OEP for Exchanges and non-grandfathered off-Exchanges will harm continuous coverage. Shortening the OEP by 17 days will severely limit access to coverage, especially for AI/AN individuals experiencing job transitions, geographic relocations, or barriers to timely enrollment. If CMS decides to limit the OEP, we urge CCIO to maintain the special enrollment period (SEPs) for AI/ANs as discussed below.

6. Special Enrollment Periods (SEPs) (45 CFR § 155.420)

In addition to the 1402(d) citation for AI/ANs, we request the final rule continue to retain current law, which provides eligible AI/AN people to receive special enrollment periods (SEPs) under 45 CFR § 155.420(d)(8). Eligibility for this monthly SEPs is limited to AI/AN people as defined in Section 4 of the IHCIA. The justification for allowing AI/AN people a special enrollment period is discussed below and was in express recognition of the unique legal and political status of Tribal governments and their citizens they serve and this federal trust responsibility to provide healthcare services.

Congress authorized a special enrollment period for AI/AN people to provide portability of health care coverage for when AI/ANs move in and away from IHS health facilities and to address coverage areas, when migrating between reservations and rural and urban areas to access employment or educational opportunities. It is not unusual for AI/AN to move to/from reservations for employment or educational opportunities and lose access to their health care provider. When this happens, these individuals may not be eligible for Medicaid and would lose coverage because the Marketplace open enrollment period has passed. The SEP for AI/AN helps to address these situations. This statute supports all AI/ANs regardless of where they reside as well as for AI/AN individuals who experience unemployment or gaps in private insurance.

TTAG leadership is concerned with the proposal to repeal monthly SEP for individuals ≤150% FPL eligible for APTC and requiring Exchanges to verify at least 75 percent of new enrollments through SEPs for consumers not already enrolled in coverage through the Exchange. Repealing monthly SEP for individuals ≤150% FPL eligible for APTC will overburden public emergency and urgent healthcare services placing additional strain on state public health systems. The reinstatement to verify 75 percent of new enrollments through SEPs will overburden Exchanges resulting in delays of coverage. These proposals are inefficient and will overburden healthcare administration.

7. Premium Adjustment Percentage Methodology (45 CFR § 156.130)

TTAG leadership is concerned with the proposal to update the premium adjustment percentage methodology which directs HHS to publish an annual premium adjustment in the annual notice of benefit and payment parameters. The proposal to calculate the premium adjustment percentage using an adjusted private individual and group market health insurance premium measure will be harmful to costs passed onto AI/AN beneficiaries who receive services outside of the Indian healthcare system.

We are deeply concerned that the annual premium adjustment will be burdensome to the Department when the current methodology of calculations bases projections on the average per enrollee employer-sponsored insurance (ESI) premiums, providing a stable and predictable cost framework. The assumption that the new calculation would more accurately reflect true premium growth should be further study. At the very least, language like the 2015 Payment Notice (79 FR 13801) should be included, allowing CMS to change the methodology after the initial year of implementation based on premium fluctuations.

CONCLUSION

The TTAG leadership strongly recommends delaying implementation of CMS-9884-P until Congressional reconciliation and Medicaid appropriations are finalized and impacts on AI/AN populations can be assessed. We trust our comments allow you to better understand the unique challenges for AI/AN populations who receive health care services outside of the Indian healthcare system. We appreciate your consideration of these concerns and stand ready to collaborate on solutions that uphold the longstanding trust and treaty obligations.

Sincerely,

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