



United South and Eastern Tribes, Inc.

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USET Resolution No. 2013:047

SUPPORT FOR EQUAL TREATMENT OF INDIAN HEALTH SERVICE AND TRIBAL HEALTH CLINIC EMPLOYEE HEALTH PROFESSIONALS WITH REGARD TO THE FEDERAL INCOME TAX STATUS OF MEDICARE AND MEDICAID INCENTIVE PAYMENTS

- WHEREAS,** United South and Eastern Tribes Incorporated (USET) is an intertribal organization comprised of twenty-six (26) federally recognized Tribes; and
- WHEREAS,** the actions taken by the USET Board of Directors officially represent the intentions of each member Tribe, as the Board of Directors comprises delegates from the member Tribes' leadership; and
- WHEREAS,** the Medicare and Medicaid Electronic Health Records (EHR) Incentive Program, created by the Health Information Technology for Economic and Clinical Health (HITECH) Act (enacted as part of the American Recovery and Reinvestment Act of 2009), provides incentive payments directly to certain health care professionals participating in Medicare and Medicaid programs for the use of EHR technology; and
- WHEREAS,** in the case of eligible health professionals employed by the Indian Health Service (IHS), EHR incentive payments are not retained by the health professional but are credited to IHS, such that the health professional acts merely as a conduit or agent of the IHS for purposes of the incentive payments and may not keep the payments; and
- WHEREAS,** Tribal health clinics and facilities are also permitted by regulation to contract with their employee health professionals for reassignment of EHR incentive payments to the Tribal clinic or facility; and
- WHEREAS,** the Office of the General Counsel for IHS has issued written guidance to the Internal Revenue Service clarifying that EHR incentive payments made to IHS employee health professionals but credited to the IHS are not attributable as income to the employee health professional for purposes of federal income reporting and taxation, but the Office of the General Counsel has not issued similar guidance with respect to employee health professionals of Tribal health clinics; and
- WHEREAS,** health professionals who enter into contracts to reassign EHR incentive payments to their Tribal health clinic employer are similarly situated to IHS employees whose EHR incentive payments are credited to IHS, and should be treated equally for federal income reporting and taxation purposes; and
- WHEREAS,** the treatment of incentive payments to Tribal health clinic employees who credit those payments to their Tribal employer as a reportable or taxable event for federal income tax purposes results in a penalty on Tribal health care providers and adds to the existing difficulty that Tribes face in attracting and retaining needed quality health care professionals to serve Indian communities;

WHEREAS, in a May 15 letter to USET Executive Director Kitcki Carroll, IHS Director Dr. Yvette Roubideaux has, much to the disappointment of the USET Board, declined to assist and advocate on behalf of Tribal health programs to address this matter by issuing a letter that clarifies that from the IHS' perspective health professionals who work for Tribal health programs who enter into contracts to reassign EHR incentive payments to their Tribal health clinic employer are similarly situated to IHS employees whose EHR incentive payments are credited to IHS, and should be treated equally for federal income reporting and taxation purposes; and

WHEREAS, in December 2010 the United States recognized the rights of its First Peoples through its support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), whose provisions and principles support and promote the purposes of this resolution; therefore, be it

RESOLVED that the USET Board of Directors calls upon Dr. Roubideaux to revisit and reconsider her May 15 letter and actively advocate for Tribes on this issue; and, be it further

RESOLVED that the USET Board of Directors further calls upon the Internal Revenue Service to acknowledge that Medicare and Medicaid Electronic Health Records incentive payments are not attributable as income to a health professional when such incentive payments are credited not to the health professional, but to the health professional's Indian Health Service or Tribal employer, because those health professionals receive such payments merely as a conduit or agent for their Indian Health Service or Tribal employer, and further that such payments should not be treated as a reportable event.

CERTIFICATION

This resolution was duly passed at the USET Semi-Annual Meeting, at which a quorum was present, in Niagara Falls, NY, on Friday, May 17, 2013.



Brian Patterson, President
United South and Eastern Tribes, Inc.



Brenda Lintinger, Secretary
United South and Eastern Tribes, Inc.

“Because there is strength in Unity”