



MAY 15 2013

Indian Health Service
Rockville MD 20852

Mr. Kitcki A. Carroll
Executive Director
United South and Eastern Tribes, Inc.
711 Stewarts Ferry Pike, Suite 100
Nashville, TN 37214

Dear Mr. Carroll:

I am responding to your April 2 letter concerning your request for the Department of Health and Human Services (HHS) Office of the General Counsel (OGC) to revise its letter that provides clarification on Medicaid Meaningful Use payments received by federal employees to include employees of Tribes or Tribal organizations carrying out contracts or compacts under the Indian Self-Determination and Educational Assistance Act, Public Law 93-638 (ISDEAA). OGC developed the letter upon learning that federally-employed health professionals may have received Internal Revenue Service (IRS) 1099-MISC forms reporting the Meaningful Use Incentive payments they registered and attested for on behalf of their facility as miscellaneous income to them as individuals. However, all federally-employed health professionals who registered and attested for these payments were acting within the scope of their federal employment, and the incentive payments are required by law to be credited to the respective IHS facility, not to the individual as income. OGC discussed this matter with the Office of Chief Counsel for the IRS and developed the letter you reference as a solution; affected individual federal employees, when filing a return, can submit the letter with the miscellaneous income form explaining the circumstances.

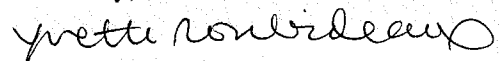
We understand that some Tribal health professionals may also experience the same problem. However, the OGC is unable to represent Tribal health professionals in matters before the IRS and OGC cannot revise the letter to include Tribal health professionals per your request. OGC is authorized to provide legal advice, guidance, and assistance to Department officials and agency personnel concerning legal issues arising from official duties in federal programs. Providing legal assistance to an Indian Tribe or Tribal organization on this matter could involve representation before the IRS, and such actions would be prohibited by 18 USC § 205. Although Congress has authorized employees of the United States to act as agents or attorneys for ISDEAA contractors in specific circumstances under 25 USC § 450i(j)(1), such circumstances are not present here. In addition, a written communication could be interpreted as "representation" under 18 USC § 205.

While OGC is not able to revise its letter to cover Tribal practitioners, we believe it is appropriate for Tribes or Tribal Organizations to consult their own attorneys or tax advisors to develop a letter appropriate for their employees to be used in the same manner. Then the affected Tribal employees can take the same steps as federal employees when filing their individual income tax returns; they can submit a letter drafted by the attorney representing their Tribe or Tribal Organization with the miscellaneous income form explaining the circumstances.

Page 2 – Mr. Kitcki Carroll

IHS and OGC plan to work with the IRS and the Centers for Medicare and Medicaid Services to assist them in developing a more permanent solution in future years.

Sincerely,

A handwritten signature in cursive script that reads "Yvette Roubideaux". The signature is written in black ink and is positioned above the printed name.

Yvette Roubideaux, M.D., M.P.H.
Acting Director