



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted via:
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Seema Verma
Administrator
Centers for Medicare and Medicaid Services
200 Independence Ave SW
Washington, D.C. 20101

Dear Administrator Verma,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to provide comment to the Centers for Medicare and Medicaid Services (CMS) on the agency's request for input and recommendations regarding the elimination of specific stringent Scope of Practice Medicare regulations, including supervision and licensure requirements. According to CMS, the agency is seeking feedback on part of President Trump's Executive Order (EO) #13890, "*Protecting and Improving Medicare for Our Nation's Seniors*." The EO directs HHS to propose regulations that would eliminate a number of burdensome regulatory requirements of the Medicare program. As CMS considers the elimination of burdensome regulatory requirements, it must, in consultation with Tribal Nations, work to identify those that act as barriers to the exercise of Tribal sovereignty and the execution of the federal trust responsibility and obligations. This includes the requirement for physician supervision of mid-level practitioners.

USET SPF is a non-profit, inter-tribal organization representing 30 federally recognized Tribal Nations from the Canadian Border to the Everglades and across the Gulf of Mexico¹. Both individually, as well as collectively through USET SPF, our member Tribal Nations work to improve health care services for American Indians. Our member Tribal Nations operate in the Nashville Area of the Indian Health Service, which contains 36 IHS and Tribal health care facilities. Our patients receive health care services both directly at IHS facilities, as well as in Tribally-operated facilities under contracts with IHS pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), P.L. 93-638.

Medicare is a crucial component in delivering upon the federal trust obligation to provide healthcare to Tribal Nations and Native people. In recognition of the obligation to and unique status of Tribal Nations, Congress amended the Social Security Act over 40 years ago in 1976 to authorize Medicare and Medicaid reimbursement for services provided in IHS and Tribally-operated health care facilities. These 3rd party reimbursements from Medicare, particularly to Tribal health programs, are a critical source of funding for

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe—Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

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the chronically underfunded Indian Healthcare System, as those funds go back into IHS and Tribal health programs to provide more and better services to Tribal communities. However, the regulatory infrastructure that the Indian Health System must contend with in order to receive the resources that Congress intended is incredibly complicated, frequently burdensome, and, at times, expensive.

As CMS seeks input regarding elimination of stringent supervision regulations within existing Scope of Practice requirements, USET SPF provides recommendations below on how CMS can help to alleviate burdensome regulations that serve as barriers to quality health care for Native people and impede the delivery and execution of trust obligations. We further urge CMS to work closely with Tribal Nations on how any changes to Medicare regulations protect as well as improve access to healthcare for AI/ANs.

Regulatory Challenges for Tribal Nations Billing Medicare

Many Tribal Nations, including those in our membership are located in areas where it is difficult to attract and retain providers. This, compounded with the extremely limited funding provided by the Indian Health Service, leads many Tribal Nations to rely on Physician Assistants, Nurse Practitioners, and other non-physician providers for care. These capable providers provide high quality care to Tribal communities. At the same time and in accordance with the IHS 'Payor of Last Resort' provision in the Indian Health Care Improvement Act, Tribal Nations seek reimbursement from Medicare and Medicaid in order to bring additional resources into our health systems.

Despite the critical role that 3rd party billing has in the Indian Healthcare System, Tribal health programs must meet stringent requirements under 42 CFR part 405, subpart X, and 42 CFR part 491 in order to bill Medicare under current regulations as a Federally Qualified Health Center (FQHC). These regulations mandate that services rendered by Tribal health programs as an FQHC must be provided under the supervision of a physician.

In order to meet these statutory requirements, some of our member Tribal Nations have turned to contracting the services of locum tenens, or temporary physicians. While locum tenens serve a valuable purpose in covering gaps in patient care during short-term and usual circumstances, Tribal Nations have been faced with contracting locum tenens as a long-term and expensive solution due to lack of available options. This requirement has placed an unfunded mandate on Tribal Nations by requiring Tribal health programs to use limited resources to essentially pay to bill Medicare; a violation of the trust obligation.

As CMS seeks input and recommendations regarding elimination of specific stringent supervision Medicare regulations within existing Scope of Practice requirements, USET SPF urges the elimination or reduction of the physician supervision requirements under current regulations. Costs associated with meeting these regulatory requirements have fallen directly upon Tribal governments, many of whom already struggle to provide basic services to our citizens as a direct result of the failure of the United States to deliver upon its promises. We remind CMS that the agency has a trust responsibility to provide healthcare to Tribal Nations, and we urge the agency to eliminate barriers in accessing critical Medicare reimbursements. USET SPF further recommends CMS determine how current regulations can be amended to allow other trained healthcare professionals, including Physician Assistants and Advanced Practice Registered Nurses, as meeting the requirement for supervision.

Meaningful and Ongoing Tribal Consultation

The federal government, including CMS, has an obligation to consult with Tribal Nations when taking actions that will affect our access to healthcare. CMS must seek the advice and guidance of Tribal Nations as it works to implement the directives of the EO. Though USET SPF was glad to see CMS informally request input regarding the Scope of Practice, we urge the agency to immediately engage in formal

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consultation with Tribal Nations on this and other issues that will be addressed under the EO. This includes ensuring Tribal Nations have the opportunity to provide guidance prior to the elimination

Conclusion

While USET SPF appreciates CMS's efforts to reduce regulatory burdens within Medicare, the agency must ensure these efforts include Tribal Nations and the Indian Health System as full partners. This includes removing barriers to accessing the resources and health care to which we are entitled. As always, USET SPF stands ready to assist CMS in endeavors that would improve the agency's delivery of its trust responsibility and obligations. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 202-624-3550.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director