



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted via: www.regulations.gov

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The Honorable Alex M. Azar II, Secretary
Department of Health and Human Services
200 Independence Avenue SW
Washington, D.C. 20201

Dear Secretary Azar,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to the U.S. Department of Health and Human Services (HHS) to convey our extreme concern regarding the agency's Proposed Rule, Securing Updated and Necessary Statutory Evaluations Timely (SUNSET). Under the Proposed Rule, HHS seeks to set automatic expiration periods on all health care regulations in Chapter 42 and 45, including critical regulations implementing Medicaid, Medicare and governing the Indian Health System. USET SPF finds it deeply troubling that HHS would seek to promulgate a rule that would threaten to eliminate regulations necessary to carrying out the trust and treaty obligations to Tribal Nations. HHS must take immediate action to rescind the Proposed Rule in its entirety.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of 33 federally recognized Tribal Nations from the Northeastern Woodlands 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 Native people. 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.

Uphold Critical HHS Regulations Governing Indian Health System

As HHS well knows, the Indian Health System and Indian-specific provisions within Medicaid and Medicare rely on a number of regulations that have been negotiated between Tribal leaders, technical experts, and HHS officials for decades on a government-to-government basis. These include the regulations governing the Indian Health Service, Tribal Self-Governance, and Indian specific provisions in the Medicaid,

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), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), 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), Upper Mattaponi Indian Tribe (VA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

Medicare, Children's Health Insurance Program, and Marketplace regulations. While some of these regulations are mandated by law and would rightly be exempted from the arbitrary expiration dates under this Proposed Rule, the vast majority of the HHS' regulations affecting the Indian Health System would have to be assessed by HHS to remain in effect. We are concerned that the assessment process will impose such a burden on HHS that many regulations would likely expire simply because the HHS could not devote the resources necessary to conduct the required assessment. At a minimum, this rule would create significant confusion regarding some of the most critically important regulations necessary for operations within the Indian Health System and the delivery of the federal trust obligation, causing serious uncertainty to a health care system that is already chronically underfunded and under-resourced year after year. Rather than undermining these critical Indian-specific regulations with uncertainty and confusion, HHS must work with Indian Country to determine measures that would uphold and strengthen the Indian Health System to deliver the best possible health care to Tribal Nations and Native people.

Complete Lack of Tribal Notification and Consultation

USET SPF is extremely disappointed that this Administration has again failed to honor its solemn duty to consult with Tribal governments on an initiative that would have enormous implications for the provision of health care to Native people. Most troubling is that HHS officials have been made aware of the Proposed Rule but failed to notify Tribal leaders and representatives of the initiative, even as various Tribal advisory groups within HHS met within the last month to discuss Tribal/HHS matters. We underscore that this is a blatant violation of the HHS' duty as a federal agency to consult with Tribal nations under Executive Order 13175 and the Department's own Tribal consultation policy.

Perceived Authorities Under the Regulatory Flexibility Act

Further, USET SPF does not believe the HHS has the legal authority to promulgate the rule. While HHS is claiming the authority to implement the Proposed Rule under a section of the Regulatory Flexibility Act, 5 U.S.C. 610(a), that provision only calls for an agency to undertake a periodic review of its regulations. It does not authorize HHS to impose arbitrary time limits on the useful life of all of its regulations.

Conclusion

Not only does it remain deeply concerning that this sweeping effort at deregulation is being promulgated with zero outreach and consultation to Tribal Nations (despite impact the rule would have on the continued operation of HHS and the Indian Health System), but we are troubled that HHS would release such a rule in the midst of an international pandemic. If implemented, the Proposed Rule would threaten the regulatory underpinnings of the Indian Health System and completely disrupt HHS' ability to fulfill its trust and treaty obligation to provide care to Tribal Nations and Native people. In fulfillment of its obligations to Indian Country, USET SPF strongly urges HHS to immediately rescind this indiscriminate and ill-advised Proposed Rule. 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