Summary of Centers for Medicare and Medicaid Services
All Tribes Conference Call on the Implementation of the
Affordable Care Act
November 5, 2010

The Tribal Affairs Group, within the Centers for Medicare and Medicaid Services (CMS) conducted the second in a series of biweekly teleconferences to explore issues related to the impact of health care reform on Indian Country. The November 5 teleconference discussed issues of licensure. CMS staff, Kitty Marx, the Director of the Tribal Affairs Group (TAG), and Lane Terwilliger, Technical Director, CMCS, opened the call with a brief introduction of the two topics:

- Section 134 of the Indian Health Care Improvement Act (IHCIA), Senate Bill 1790, Methods to increase clinical recruitment and retention issues which amends Section 221 licensing under the Indian Health Care Improvement Act.
- Section 156 of Senate Bill 1790: Nondiscrimination under Federal Health Care Programs and Qualification for Reimbursement of Services which is a new section 408 of the Indian Health Care Improvement Act.

The call first addressed the licensing of health professional issues contained in Section 134 of the IHCIA which amends Section 221 of the current law to exempt a health care professional employed by a tribally operated health program from state licensing requirements if the professional is licensed in any state. The call entertained a variety of questions from participants regarding the exemption from state licensure for health care providers employed by tribal health programs who are licensed in at least one State. One caller asked whether the provision applies to urban Indian programs. One participant asked how this provision might relate to private insurance companies that require State licensure for credentialing, and another wondered what might be done in States with medical societies that claim an exclusive prerogative to set standards for licensure. In both cases, callers recommended that some type of communication from the IHS Director, in the form of a letter to Tribal Leaders, or from CMS, in a letter to the State Medicaid Director, or other guidance would be helpful. One caller suggested that the IHS Director should prepare a Dear Tribal Leader letter spelling out the effect of the law so the Tribes could show that letter to States and private insurance companies who dispute the contention that a provider can be licensed in any State. CMS Native American Contacts (NACs) might also be consulted now for assistance when working with States on the implementation of these provisions. Callers requested clarification as to whether the "licensed in any State" provision applies to a health care professional who is providing services under a personal services contract.

The second provision discussed on the call was Section 156 which creates a new section 408: nondiscrimination under federal health care programs and qualifications for reimbursements for services. The call focused on the licensure provisions in section 156 which provides:

> that any requirement for participation as a provider of health care services under a Federal health care program that an entity be licensed or recognized under the State or local law where the entity is located to furnish health care services shall be deemed to have been met in the case of an entity operated by the Service, an Indian tribe, tribal organization, or urban Indian organization if the entity meets all the applicable standards for such licensure or recognition, regardless of whether the entity obtains a license or other documentation under such State or local law. In accordance with section 221, the absence of the licensure of a health professional employed by such an entity under the State or local law where the entity is located shall not be taken into account for purposes of determining whether the entity meets such standards, if the professional is licensed in another State.

Callers asked questions about how the condition of meeting "generally applicable standards" will be met. One caller suggested that Tribes be allowed to attest that their program meets such standards. It was requested that the various conditions that States require be catalogued and discussed to assist in a determination about which should or should not be considered as part of generally applicable standards. One caller asked how the nondiscrimination provision in section 156 applies to a situation that allows FQHCs/RHCs to provide certain Medicaid optional services and tribal clinics could not -- is that what was intended by the nondiscrimination language? Questions were asked as to whether State contractors/brokerages could impose State licensure or other additional requirements (such as waiver of tribal sovereignty), notwithstanding section 156. A caller asked that guidance to States include an explanation or definition of federal health programs.