



FEB 01 2013



Dear Tribal Leader:

The Centers for Medicare & Medicaid Services (CMS) and the U.S. Department of Treasury (Treasury) are committed to engaging in meaningful consultation with Tribes on matters that have tribal implications. To that end, we are writing to request your advice and input on separate Notices of Proposed Rulemaking (NPRMs) published by CMS and Treasury. The CMS NPRM, "Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions," seeks to establish eligibility standards for determinations for exemptions from the requirement to maintain minimum essential coverage (MEC) issued through the Exchange in accordance with section 1311(d)(4)(H) and 1411 of the Affordable Care Act (ACA). The Treasury NPRM, "Shared Responsibility Payment for Not Maintaining Minimum Essential Coverage," relates to the requirement to maintain MEC, and exemptions from that requirement under section 5000A of the Internal Revenue Code.

The relationship between the CMS NPRM and the Treasury NPRM is very similar to the relationship between the CMS Exchange final rule and the Treasury Premium Tax Credit final rule. The CMS NPRM describes the process through which the Exchange will implement substantive standards that are proposed in the Treasury NPRM. Section 1501(b) of the ACA adds section 5000A to the Internal Revenue Code, which outlines nine categories of individuals who are exempt from the requirement to maintain MEC and the associated shared responsibility payment. One of these categories is comprised of members of Indian Tribes.

In accordance with the statute, CMS defined issuing certificates of exemption as one of the minimum functions of an Exchange in the Exchange final rule. To further expand on the Exchange final rule, the CMS proposed rule encompasses the following:

- Includes standards related to the categories of exemptions that will be handled by the Exchange;
- Outlines a verification and eligibility determination process for these exemptions;
- Provides an option to use a Federally-managed service for conducting eligibility determinations for exemptions, instead of the Exchange handling this independently;
- Addresses changes in eligibility for exemptions during a taxable year, reporting to IRS, and other supporting functions; and
- Proposes that the once the attestation regarding Indian status (member of a Federally-recognized Indian Tribe) is verified, the exemption based on Indian status of an American Indian or Alaska Native (AI/AN) will be maintained continuously until a change is reported (this would eliminate an AI/AN from having to provide documentation regarding Indian status for the verification process each year).

The Treasury proposed rule provides guidance regarding the definition of MEC, requirement for nonexempt individuals to either maintain MEC or pay the shared responsibility payment, the exemptions from the requirement to maintain MEC, and the calculation of the shared responsibility payment. In conjunction with the CMS NPRM, the Treasury NPRM also clarifies

which exemptions can be certified in advance by an Exchange and which exemptions can be claimed only on a Federal income tax return. The proposed rules provide that the exemption for members of Indian Tribes may be obtained either by applying for the exemption at an Exchange (following the procedures provided in the CMS proposed rule) and reporting the receipt of an exemption certification with a Federal income tax return, or claiming the exemption on a Federal income tax return for the taxable year.

In accordance with the statute, the Treasury proposed rule provides that the term “Indian tribe” means a Federally-recognized Indian tribe (including any qualified Alaska Native village or regional or village corporation). The Federally-recognized Indian Tribes are listed in Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 75 Fed. Reg. 60810 (Oct. 1, 2010), as supplemented by 75 Fed. Reg. 661124 (Oct. 27, 2010), or its successor. This definition of Indian Tribe is consistent with the definition of Indian, as referenced in the ACA, used for eligibility determinations regarding zero cost-sharing and special monthly enrollment period provisions outlined in the CMS Exchange final rule.

### **TRIBAL CONSULTATION**

Tribal consultation will be held in Washington, D.C. on February 21 at the conclusion of the CMS Tribal Technical Advisory Group (TTAG) meeting. A call-in line will be available for Tribal leaders who are not able to attend in person. The details for the meeting are as follows:

**Date: Thursday, February 21, 2013**

**Time: 12:30pm to 2:00pm, Eastern Time**

**Location: HHS Hubert Humphrey Building, Room 505A**

**Call-in number: 877-267-1577; Passcode: 2579**

**Webinar Link: <https://webinar.cms.hhs.gov/r11342460/> (NOTE: Presentation slides will only be available during the call. To access the slides, please login to the website as a Guest.)**

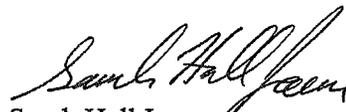
We encourage you to submit written comments during the comment period as outlined in the Federal Register notice. Written comments that are submitted during the comment period will become part of the official rulemaking record. Please contact Kitty Marx, Director of CMS Tribal Affairs Group, with any questions or concerns by phone, (410) 786-8619, or via e-mail, [kitty.marx@cms.hhs.gov](mailto:kitty.marx@cms.hhs.gov).

We look forward to obtaining your advice and feedback on the proposed rules.

Sincerely,



Marilyn Tavenner  
Acting Administrator  
Centers for Medicare & Medicaid Services



Sarah Hall Ingram  
Director, Affordable Care Act Office  
Internal Revenue Service