

# National Indian Health Board



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August 30, 2011

Centers for Medicare & Medicaid Services  
Office of Strategic Operations and Regulatory Affairs  
ATTN: Document Identifier: CMS-10137  
Room C4-26-05  
7500 Security Avenue  
Baltimore, MD 21244-1850

**RE: Request for Information on CMS-10137: Medicare Part D Plans**

The National Indian Health Board<sup>1</sup> (NIHB) is submitting these comments in response to the request for information published on July 1, 2011 in the *Federal Register* by the Centers for Medicare and Medicaid Services (CMS) of the Department of Health and Human Services (HHS) involving “Application for Prescription Drug Plans; Application for Medicare Advantage Prescription Drug; Application for Cost Plans to Offer Qualified Prescription Drug Coverage; Application for Employer Group Waiver Plans to Offer Prescription Drug Coverage; Service Area Expansion Application for Prescription Drug Coverage” (CMS-10137).

The above-captioned *Federal Register* notice seeks public comments on documents related to the 2013 operation of the Medicare Part D program. Pursuant to CMS regulation at 42 CFR 423.120, Part D plans must offer standard contracting terms and conditions to I/T/U pharmacies that conform to the model addendum developed by CMS.<sup>2</sup> The materials offered for public comment contain versions of the model I/T/U addendum that have been updated to reflect changes in Federal law made by the Patient Protection and Affordable Care Act (ACA). We applaud the continued inclusion of the I/T/U addendum by CMS.

The I/T/U addendum is a critically important tool that ensures that I/T/U can meaningfully participate in Medicare Part D plans. By setting out applicable Federal law in a single comprehensive Indian contract addendum, the I/T/U addendum has both improved compliance with Federal law as well as reduced the costs and administrative burdens associated

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<sup>1</sup> Established nearly 40 years ago, NIHB is an inter-Tribal organization that advocates on behalf of Tribal governments for the provision of quality health care to all American Indians and Alaska Natives. NIHB is governed by a Board of Directors consisting of a representative from each of the twelve Indian Health Service (“IHS”) Areas. Each Area Health Board elects a representative to sit on the NIHB Board of Directors. In areas where there is no Area Health Board, Tribal governments choose a representative who communicates policy information and concerns of the Tribes in that area with NIHB. Whether Tribes operate their entire health care program through contracts or compacts with IHS under Public Law 93-638, the Indian Self-Determination and Education Assistance Act (“ISDEAA”), or continue to also rely on IHS for delivery of some, or even most, of their health care, NIHB is their advocate.

<sup>2</sup> Medicare Advantage plans offering Part D drug coverage are likewise required to use the I/T/U addendum.



with negotiating these provisions for both the Part D plans and I/T/U providers. The I/T/U addendum includes, for instance, provisions on the Federal Tort Claims Act and a waiver from the requirement to carry professional liability insurance. By providing that the requirements listed in the I/T/U addendum supersede any inconsistent provisions in a Part D plan, the I/T/U addendum ensures that I/T/U providers can participate in the Medicare Part D program.

We support the continued use of the I/T/U addendum in connection with Medicare Part D plans. It has proven to be efficient, effective and easy to use for both Medicare Part D plan sponsors and Indian health pharmacies.

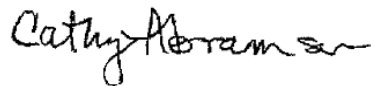
For the same reason, we believe it would be beneficial to require that a similar I/T/U addendum be used in connection with the health plans offered through the to-be-established health insurance exchanges (Exchanges) called for under the Affordable Care Act. In comments submitted to the CMS Center for Consumer Information and Insurance Oversight (CCIIO), NIHB has recommended, and we will again recommend, that such a requirement be instituted for Exchange plans.

As the I/T/U experience with Medicare Part D demonstrates, the use of a mandatory I/T/U addendum is critical to facilitating participation by I/T/U – and the provision of timely, accessible services to AI/AN – under the Part D program. The same will hold true with regard to Exchange plans. Without the use of an I/T/U addendum, it will be difficult and inefficient for I/T/U providers to negotiate separately with each health plan offered through an Exchange, many of which may not be familiar with the Federal laws that apply to I/T/U. Although these laws apply in any event, setting them out in one place increases compliance and reduces the administrative costs and burdens on both the Exchange plan issuers and I/T/U providers from negotiating them.

We urge the CMS/Center for Medicare to share its experiences involving the mandatory use of the I/T/U addendum under Part D plans with the CMS/CCIIO in order that CCIIO more fully understands the applicability and benefits of requiring a similar mechanism for Exchange plans.

Thank you in advance for consideration of these recommendations as we jointly work to advance the health status of American Indian and Alaska Native individuals and communities across the United States.

Sincerely



Cathy Abramson  
Chairman, National Indian Health Board

C: Valerie Davidson, Chair, Tribal Technical Advisory Group to CMS  
Dr. Yvette Roubideaux, Director, Indian Health Service  
Kitty Marx, Director, CMS Tribal Affairs Group  
Stacy Bohlen, Executive Director, NIHB  
Jennifer Cooper, Legislative Director, NIHB