

NATIVE AMERICAN CAUCUS LETTER TO SEC AZAR & ADMIN. VERMA

The Hon. Alex Azar
Secretary, Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

The Hon. Seema Verma
Administrator, Center for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Dear Mr. Secretary and Ms. Administrator:

We are writing to express our profound concern and strong opposition to a recent decision by the Center for Medicare and Medicaid Services (CMS) to undermine tribal sovereignty.

We are specifically referring to a January 11th letter to state Medicaid directors and a January 17th letter to tribal leaders, both from CMS Director Brian Neale. Beyond the question of legality of the underlying authority of CMS to allow Medicaid work requirements under Section 1115 of the Social Security Act, we strongly oppose CMS's guidance that would deny any exemption of tribal citizens from state Medicaid waiver requests.

In short, the letters state that tribal citizens should be considered a racial group for the purposes of their receipt of benefits under the Medicaid program. This unprecedented CMS approach sweeps aside decades of Supreme Court jurisprudence, numerous statutes, long-established Executive Branch policies governing the relationship between sovereign governments and the Department of Health and Human Services' (HHS) own formal administrative policies. In addition to threatening tribal sovereignty, this shortsighted and ill-informed decision will have the added effect of reducing funds available to the Indian Health Service (IHS) —in effect, undermining Congress's intent in enacting Section 1911 of the Social Security Act to authorize IHS reimbursements under Medicaid. Those reimbursements direct federal funds in support of the federal trust relationship with American Indian and Alaska Native peoples.

We write to reaffirm that the United States and tribal governments interact on a government-to-government basis and that programs enacted by Congress to benefit Native Americans are provided as a function of that political relationship. We further write to emphasize that CMS should not administer Medicaid in any manner that would adversely impact IHS's access to funding.

We respectfully request that you immediately rescind these misguided policy decisions, engage in meaningful tribal consultation and treat tribes as the sovereigns they are under the law. In this particular instance we urge CMS to:

- (a) retract the previous January 11, 2018 guidance that proposes to subordinate sovereign tribal governments to Medicaid work requirements imposed by States;
- (b) affirm that exemptions granted to tribal citizens are based in their status as a political class, not a racial classification; and
- (c) commit to honoring the government-to-government federal trust relationship by conducting tribal consultations at the federal level, not delegating that responsibility to the states.

We look forward to your prompt action and reply. Thank you for considering our request.