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Bristol Bay Area Health Corporation is a tribal organization representing 34 villages in Southwest Alaska:

Aleknagik
Chignik Bay
Chignik Lagoon
Chignik Lake
Clark's Point
Dillingham
Egegik
Ekuk
Ekwok
Goodnews Bay
Igiugig
Iliamna
Ivanof Bay
Kanatak
King Salmon
Knugank
Kokhanok
Koliganek
Levelock
Manokotak
Naknek
New Stuyahok
Newhalen
Nondalton
Pedro Bay
Perryville
Pilot Point
Platinum
Port Heiden
Portage Creek
South Naknek
Togalak
Twin Hills
Ugashik

To promote health
with competence.
a caring attitude &
cultural sensitivity

October 09, 2013

SUBMITTED VIA ELECTRONIC MAIL
(gennifer.moreau@alaska.gov)

Ms. Gennifer Moreau
Medicaid State Plan Coordinator
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Re: September 9, 2013 Dear Tribal Health Leader Letter on MAGI Transition.

The Bristol Bay Area Health Corporation (BBAHC) a tribal consortium of 34 tribes located in Southwest Alaska thank you for this opportunity to comment on this important matter.

I. Introduction.

On September 9, 2013, the Alaska Department of Health and Social Services (DHSS or the Department) released a Dear Tribal Health Leader letter (Consultation Letter) initiating Tribal consultation on a proposed future Medicaid state plan amendment (SPA). The consultation concerns the Department's transition toward the use of a formula called "Modified Adjusted Gross Income" (MAGI) that will be used to determine Medicaid eligibility for most individuals beginning on January 1, 2014.¹

The SPA on which we have been asked to comment is only one of many steps CMS required of States in its December 2012 guidance to State Medicaid agencies on the process through which each State must seek CMS approval of the methodology and outcomes associated with the State's transition to MAGI.² The submission of the SPA is one of the later steps. As we have noted before, the Tribal consultation process in Alaska would be significantly more robust and helpful to the State (and to Tribes) if engagement were to occur earlier while the substantive decisions leading to the SPA were being considered. That did not occur in this instance, and leaves us with many questions.

¹ 42 U.S.C. § 1396a(e)(14); *see also* 26 U.S.C. § 36B(d)(2)(B) (setting out definition of MAGI for the purposes of the Tax Code); *see also* 42 C.F.R. § 435.603(e) (incorporating Tax Code definition of MAGI for the purposes of determining Medicaid eligibility and including additional income exemptions).

² CENTERS FOR MEDICARE AND MEDICAID SERVICES, DEAR STATE MEDICAID DIRECTOR LETTER RE: CONVERSION OF NET INCOME STANDARDS TO MAGI EQUIVALENT INCOME STANDARDS (Dec. 28, 2012) [hereinafter 2012 CMS Letter].

Because the United States has trust responsibilities to Alaska Natives and American Indians (AN/AIs), many categories of income that AN/AIs receive as a result of their status as AN/AIs are exempt both from federal income taxation and from calculation of income for the purposes of Medicaid eligibility. Understanding these exemptions and determining how they relate to each other is a significant challenge, but one that is critical to implementing this SPA. Unfortunately, the Consultation Letter fails to provide sufficient detail to allow us to assure that the special status of AN/AIs is completely protected.

Since many Medicaid recipients have income that is so low that they need not file for taxes or standard deductions, and therefore considering all the AN/AI income exemptions that might apply under the Tax Code and Medicaid, it is critical that applicants for Medicaid, and especially for AN/AI applicants who are entitled to special exemptions, be informed of all classes of exempt income. Otherwise, it is likely they will include income that should not be considered. At bottom, if all income that is supposed to be exempt under IRS MAGI calculations and, under any additional exemptions that apply to Medicaid, are specifically addressed in the SPA then we support the SPA; if not, then not.

II. Discussion.

In the 2012 Letter, CMS outlined a variety of different methodologies by which States may transition to the use of MAGI.³ Importantly, federal law requires that regardless of the methodology chosen by the State, individuals eligible for Medicaid under the State plan or under a waiver of the plan as of March 23, 2010 may not lose coverage under a State's new MAGI-based income eligibility standards.⁴ Our principal concern is assuring that this requirement is fully satisfied and that it addresses not only generally applicable Medicaid income exemptions, but also those specific to AN/AIs.

Medicaid MAGI is determined by taking an individual's modified adjusted gross income, as calculated for federal income tax purposes, and then exempting certain

³ 2012 CMS Letter at 3-5.

⁴ 42 U.S.C. § 1396a(e)(14)(A). *See also* 2012 CMS Letter at 2 (“Under the statute, to complete the transition to the MAGI-based methodology, states will develop MAGI-based income eligibility standards for the applicable eligibility groups that ‘are not less than the effective income levels’ that were used to determine Medicaid and CHIP income eligibility as of the enactment of the Affordable Care Act. The conversion of current income eligibility standards to equivalent MAGI-based income eligibility standards should account for any income disregards now used.”).

other types of income that the IRS may consider taxable.⁵ These additional exemptions under Medicaid MAGI include several types of income and resources associated with AN/AIs, categorically excluding the following:

- Distributions from Alaska Native Corporations and Settlement Trusts;
- Distributions from any property held in trust, subject to Federal restrictions, located within the most recent boundaries of a prior Federal reservation, or otherwise under the supervision of the Secretary of the Interior;
- Distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest from:
 - Rights of ownership or possession in any lands described in the preceding paragraph; or
 - Federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources;
- Distributions resulting from real property ownership interests related to natural resources and improvements:
 - Located on or near a reservation or within the most recent boundaries of a prior Federal reservation; or
 - Resulting from the exercise of federally-protected rights relating to such real property ownership interests;
- Payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable Tribal Law or custom; and
- Student financial assistance provided under the Bureau of Indian Affairs education programs.⁶

While much of this income is also exempt for the purposes of calculating MAGI under the Tax Code, the IRS still may consider some of it taxable where Medicaid MAGI does not: Medicaid MAGI income exemptions are broader than IRS MAGI exemptions.⁷ Moreover, as noted above, many Medicaid applicants do not file tax

⁵ 26 U.S.C. § 36B(d)(2)(B) (setting out definition of MAGI for the purposes of the Tax Code); *see also* 42 C.F.R. § 435.603(e) (incorporating Tax Code definition of MAGI for the purposes of determining Medicaid eligibility and including additional income exemptions).

⁶ *See* 42 U.S.C. § 1396a(ff) (applying exclusions to Medicaid for the Aged and Disabled); 42 U.S.C. § 1397gg(e)(1) (exclusions for CHIP); 42 C.F.R. § 435.603 (exclusions for Medicaid MAGI).

⁷ For example, payments from spiritual and cultural items are generally taxable unless subject to the General Welfare Doctrine, *see* 26 U.S.C. § 61; Revenue Ruling 67-284;

returns and therefore will not have the benefit of becoming familiar with the IRS exclusion of similar income. They rely on the Department to inform them what must be excluded during the Medicaid application process.

When an AN/AI applies for Medicaid, it is therefore crucial that whatever processes the State has in place for calculating MAGI, and whatever staff are charged with determining Medicaid eligibility for AN/AIs using the MAGI calculation, be able to: (1) recognize that while AN/AI income exemptions for Medicaid MAGI are similar to those for IRS MAGI, *they are not identical, and the Department must exempt more income under the broader Medicaid MAGI exemptions than the IRS exempts for IRS MAGI*; (2) identify the specific distinctions between IRS MAGI and the broader AI/AN exemptions under Medicaid MAGI; (3) identify instances where an AN/AI Medicaid application erroneously includes exempt AN/AI income, remove it from the MAGI calculation, and notify the applicant as to what was removed and why; and (4) proactively provide AN/AIs with a readily understandable list of real world examples of exempt AN/AI income in order to minimize confusion and accidents. All of this must occur whether the Medicaid applicant has filed a tax return or not.

III. Conclusion.

To the extent that the Department's proposed MAGI methodology and associated transitional proposals fully incorporate the necessary elements discussed above, and do not result in a diminishment of AN/AI Medicaid eligibility (as prohibited by law), we support them. However, in light of the lack of Tribal participation in the development of the transition, and the fact that the Department has not provided Tribes and Tribal organizations with the materials necessary to analyze the scope of the Department's changes, we are unable to determine whether the Department has fulfilled these criteria.

We stand ready to work with you in trying to achieve our objective and compliance with applicable law.

Sincerely,



Robert J. Clark
President/Chief Executive Officer

Notice 2012-75, distributions in property ownership interests may be taxable, *see Squire v. Capoeman*, 351 U.S. 1 (1956); Revenue Ruling 67-284, and certain funds distributed per capita to Indian tribes may be taxable at the individual level, *see generally* 26 U.S.C. 61(a); Revenue Ruling 67-284.