

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
San Francisco Regional Office
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San Francisco, CA 94103-6706



DIVISION OF MEDICAID & CHILDREN'S HEALTH OPERATIONS

JUL 20 2012

Tom Betlach, Director
Arizona Health Care Cost Containment System
801 East Jefferson Street
Phoenix, Arizona 85034

Dear Mr. Betlach:

In the summer of 2010, we discussed the issue of licensure of private entities operating on or off reservation land in the context of the CMS tribal provider certification process. At the time, we advised the State that non-IHS/non-638 provider entities operating either on or off reservation land would need to obtain State licensure per Federal regulation. The State acknowledged this and we understood from our discussion that implementing the requisite administrative and operational changes would require additional State/Tribal consultation work and follow-up.

We recently became aware that Toyei Industries, Inc. was operating and located on the Navajo Nation without State licensure or credentialing. Toyei Industries, Inc. is not an IHS or Tribal 638 facility. Pursuant to our telephone call on July 9, 2012, we understand that approximately 12 non-IHS, non-Tribal 638 facilities operate on Tribal land in Arizona and that the State has been accepting attestations from Tribes that these facilities meet licensure standards. At this time, we are advising the State that the practice of enrolling entities that are not exempt from State licensure and credentialing is inconsistent with Federal law and regulation and must be immediately discontinued.

During the July 9, 2012 teleconference, CMS agreed to provide written guidance to assist AHCCCS in advising the tribes and sister State agencies of Federal requirements. As promised, we are providing the statutory and regulatory guidance that only IHS, Tribal 638, and Urban Indian entities, are exempt from State licensure. Medicaid's provider licensure requirements at 42 CFR 440 Subpart A apply. In addition to requirements at 42 CFR 440 Subpart A, please see State Medicaid Director Letters at <http://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SMD011609.pdf> and <http://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SMD061208.pdf> regarding strengthening program integrity and make sure that the State follows the requirements.

Section 1647a of the Indian Health Care Improvement Act (as amended through Public Law 111-148) provides exemption from State or local licensure or recognition requirements as follows:

Nondiscrimination under Federal health care programs in qualifications for reimbursement for services.

(a) Requirement to satisfy generally applicable participation requirements.

- (1) In general. A Federal health care program must accept an entity that is operated by the Service, an Indian tribe, tribal organization, or urban Indian organization as a provider eligible to receive payment under the program for health care services furnished to an Indian on the same basis as any other provider qualified to participate as a provider of health care services under the program if the entity meets generally applicable State or other requirements for participation as a provider of health care services under the program.
- (2) Satisfaction of state or local licensure or recognition requirements. 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 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.

Section 1603 of the Indian Health Care Improvement Act defines Tribal health programs as “an Indian tribe or tribal organization that operates any health program, service, function, activity, or facility funded, in whole or part, by the Service through, or provided for in, a contract or compact with the Service under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)”

Regulations at 42 CFR 431.110 require the State Plan to provide that an Indian Health Service facility meeting state requirements for Medicaid participation must be accepted as a Medicaid provider on the same basis as any other qualified provider. However, when state licensure is normally required, the facility need not obtain a license, but must meet all applicable standards for licensure. The 1996 Memorandum of Understanding between the Health Care Financing Administration (now the Centers for Medicare and Medicaid Services, or CMS) and the Indian Health Service also extends this policy to health care facilities owned and operated by AI/AN Tribes and Tribal organizations with funding authorized by Title I or III of the Indian Self Determination and Education Assistance Act (Public Law 93-638, as amended), currently referred to as “638 facilities.”

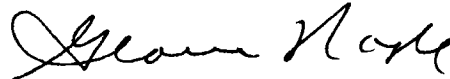
Please respond by September 19, 2012 with a plan outlining the steps that the State will take to assure compliance with Federal law and regulation regarding State or local licensure, including dates for each step and for final compliance.

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CMS has an additional concern regarding the acknowledgement letters that CMS Region IX has been sending to the Office of Inspector General since 2010, acknowledging the State's receipt of tribal attestation. As we discussed during the July 9th conference call, CMS intends to discontinue the letters, recognizing they do not serve any purpose.

If you have any questions, please contact Cindy Lemesh at (415) 744-3571 or Cynthia.Lemesh@cms.hhs.gov.

Sincerely,



Gloria Nagle, Ph.D., MPA
Associate Regional Administrator
Division of Medicaid & Children's Health
Operations

cc: Cheryl Young