



STATE OF WASHINGTON  
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**Swinomish Indian Tribal Community**

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476  
\* 11404 Moorage Way \* La Conner, Washington 98257 \*

March 8, 2021

Mr. Norris Cochran  
Acting Secretary  
U.S. Department of Health & Human Services  
200 Independence Avenue S.W.  
Washington, D.C. 20201

Ms. Liz Richter  
Acting Administrator  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Mr. Cochran and Ms. Richter:

**Re: Federal Medicaid Funding for Critically Needed Dental Services at Tribal Clinics in Washington State**

The State of Washington (“State”) and the Swinomish Indian Tribal Community (“Tribe”) write to ask the Biden Administration reconsider a last-minute denial by the Trump Administration of federal Medicaid funding for critically needed dental services at Tribal clinics in the State. The State and the Tribe have established that the services comply with and advance the purposes of the Medicaid program, especially in light of the historically inadequate care provided to Tribal members.

The denial of Medicaid funding came in the form of a final administrative decision by the Centers for Medicare and Medicaid Services (“CMS”) to disapprove a Medicaid State Plan Amendment (“SPA”) that the State had submitted, with full support from the Tribe.<sup>1</sup> The denial, which reversed a recommended decision from an impartial federal hearings officer, occurred on January 19, 2021, as the Trump Administration was winding up its affairs.

The State proposed the SPA in order to address the need for routine and critical dental care by members of federally recognized Indian tribes on Indian reservations, who do not have necessary access to sufficient dental care, especially in rural and remote areas of the State. In particular, the SPA would allow federal Medicaid funding for Dental Health Aide Therapist (“DHAT”) services at Tribal health clinics.

Through the SPA, the State acknowledged the continuing unmet need for dental care on Indian reservations and that the Tribe had addressed this need by creating its own dental health provider licensing laws and administration, as well as a DHAT training program. The program promotes access to and delivery of dental services in a culturally competent manner to meet the unique needs of Tribal communities. The cultural competency training requirements for Swinomish Tribal licensing were

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<sup>1</sup> The SPA is enclosed as Exhibit A, and CMS’s denial is Exhibit B.

necessary to address the past practices of dental care that were traumatizing to Indian communities and to train dentists and DHATs to understand and respect Indian culture and practices.

Reversing the Trump Administration's decision would advance the goals that President Biden outlined less than one week after taking office. On January 26, 2021, the President issued a Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships ("Tribal Memorandum").<sup>2</sup> The timing and content of the Tribal Memorandum illustrate the new Administration's commitment to the health and well-being of Tribal members. In part, the Tribal Memorandum provides as follows:

It is a priority of my Administration to make respect for Tribal sovereignty and self-governance, commitment to fulfilling Federal trust and treaty responsibilities to Tribal Nations, and regular, meaningful, and robust consultation with Tribal Nations cornerstones of Federal Indian policy. The United States has made solemn promises to Tribal Nations for more than two centuries. Honoring those commitments is particularly vital now, as our Nation faces crises related to health, the economy, racial justice, and climate change — all of which disproportionately harm Native Americans. History demonstrates that we best serve Native American people when Tribal governments are empowered to lead their communities, and when Federal officials speak with and listen to Tribal leaders in formulating Federal policy that affects Tribal Nations.

Through this letter, the State and the Tribe ask the Biden Administration to "speak with and listen to Tribal leaders" in connection with this important issue. CMS's denial of the SPA is directly contrary to the principles outlined in the Tribal Memorandum. The DHAT program is a classic example of "Tribal sovereignty and self-governance" and shows that Tribes in the State are indeed "empowered to lead their communities[.]" Approving the SPA and allowing the federal Medicaid funding for DHATs would be one step toward fulfilling the "solemn promises" that the Nation has made to Tribes "for more than two centuries." As President Biden noted, Tribes are "disproportionately harm[ed]" by the ongoing crises in health and other issues. The DHAT program helps address one aspect of the health crisis.

Similarly, on his first day in office, President Biden issued an Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government ("Executive Order").<sup>3</sup> The Executive Order addressed the government's need to confront disparities in our laws and public policies to advance equity for all persons by removing barriers to equal opportunity. President Biden recognized that people of color and others, including Native Americans, have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. A principal goal of the Executive Order is to create opportunities to improve communities, including Native Americans, and that federal agencies should develop policies and programs that deliver resources and benefits equitably to all. The SPA precisely exemplifies the policies and laws that encapsulate the mission of the Executive Order, because it addresses the glaring need for Native Americans to receive professional and culturally appropriate dental care in their communities.

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<sup>2</sup> The Tribal Memorandum is enclosed as Exhibit C.

<sup>3</sup> The Executive Order is enclosed as Exhibit D.

The federal hearings officer recognized the Nation's unique and enduring obligations to Tribal members, as outlined in a series of federal laws, and correctly determined that funding for DHAT services would comply with Medicaid law.<sup>4</sup> The hearings officer did so after considering voluminous documentary evidence and legal briefing, and after listening to a full day of witness testimony presented by the State and the Tribe. CMS called no witnesses. The State and the Tribe therefore ask the Biden Administration to reverse the Trump Administration's incorrect decision and adopt the carefully considered recommendation of the hearings officer.<sup>5</sup>

The State and the Tribe have clearly demonstrated that the SPA would increase access to dental services by Medicaid clients who are Tribal members or otherwise eligible for services from the Indian Health Service. The record established a much higher prevalence of dental disease and untreated decay among Native Americans compared with the general population. Testimony also showed that Tribes have historically been unable to attract dentists to remote reservations and that most tribal dentist patient caseloads, including those at the Swinomish Tribal dental clinic, are more than twice that of a typical dentist. Swinomish tribal elders recall the past practices of visiting dentists extracting members' teeth rather than treating them because of a shortage of available dental care. It is consequently not uncommon to see tribal elders without teeth or reluctant to seek needed care, because of these past practices. To overcome these disparities in oral health and dental providers, the Swinomish Tribe's DHAT program not only provides DHAT services to its community, but also has licensed DHATs from other Tribes who were able to work in their community to serve their members. DHATs are professionally trained to treat 40 procedures, whereas dentists are trained in approximately 600 procedures. The use of DHATs allows the dentist the opportunity to undertake more complex procedures, and together they are able to treat more patients and more conditions than could a single dentist alone. The utilization of DHATs has resulted in reduced wait times and fewer referrals outside the reservation, which could require patients to travel long distances to urban offices.

The hearings officer recognized these facts and correctly concluded that federal funding of DHAT services would not violate Medicaid's "free choice of provider" law. To the contrary, any Medicaid client in the State has access to precisely the same services offered by DHATs at the Swinomish clinic, by seeing any qualified and willing dental provider throughout the State.

The federal government's long-standing trust relationship with Tribes obligates the government to provide health care to all tribal citizens. Toward this end, the Indian Health Care Improvement Act ("IHCA") mandated that the government provide resources, processes, and structure that will enable Tribes and tribal members to obtain the quantity and quality of health care services and opportunities necessary to eradicate the health disparities between Indians and the general population. The IHCA, which was enacted as part of the Patient Protection and Affordable Care Act of 2010, specifically referenced DHATs and recognized that tribal DHAT services could be a part of the Indian health program.

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<sup>4</sup> The recommended decision of the hearings officer is enclosed as Exhibit E.

<sup>5</sup> The State and the Tribe have appealed the final decision to the United States Court of Appeals for the Ninth Circuit (Docket No. 21-70338). The Petition for Review is enclosed as Exhibit F. The parties can forego unnecessary time, expense, and conflict if the Administration adopts the recommended decision of the hearings officer.

Norris Cochran, Acting Secretary  
Liz Richter, Acting Administrator  
March 8, 2021  
Page 4

In addition to the State and the Swinomish Indian Tribal Community, the SPA is supported by other Tribes, the Northwest Portland Area Indian Health Board, the Washington State Dental Association, and the American Dental Association. Only CMS argued against approval of the SPA; no other party appeared to present evidence or argument in opposition to the SPA. If Medicaid funding is allowed for DHAT services, it would significantly address the unmet need of Indian communities for adequate dental health care, help eradicate the health disparities between Native Americans and the general population, and advance the laudable goals of the Tribal Memorandum and the Executive Order. For these reasons, we urge you to reverse the Trump Administration's decision and approve the SPA.

Thank you for your time and consideration.

Sincerely,



Susan E. Birch, MBA, BSN, RN  
Director



MaryAnne Lindeblad, BSN, MPH  
Medicaid Director



Steve Edwards  
Chairman  
Swinomish Indian  
Tribal Community

By email

Enclosures    *Exhibit A:* Medicaid State Plan Amendment  
*Exhibit B:* CMS Final Agency Decision  
*Exhibit C:* [Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships](#)  
*Exhibit D:* [Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#)  
*Exhibit E:* Proposed Decision of Presiding Officer  
*Exhibit F:* Petition for Review to Ninth U.S. Circuit Court of Appeals