November 30, 2016

The Honorable Sylvia Mathews Burwell
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Mary L. Smith
Principal Deputy Director
Indian Health Service
5600 Fishers Lane
Rockville, MD 20857

Andy Slavitt
Acting Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244-1850

Dear Secretary Burwell, Deputy Director Smith, and Acting Administrator Slavitt:

Access to reliable, high quality, culturally competent and affordable dental care is among the greatest health care challenges in Indian country. American Indians and Alaska Natives (AI/AN) endure a disproportionately high rate of oral health disparities due to limited access to both preventive and restorative dental care. For example, a 2016 Indian Health Service (IHS) oral health data brief reported that AI/AN adults suffer with twice the prevalence of untreated dental disease as the general population, and more than any ethnic group. The incidence of severe periodontal disease and tooth loss is also elevated. Even for our youngest children, a 2015 IHS data brief indicated that over half of AI/AN children ages 1-5 have already experienced tooth decay—four times the rate of white children. In 2014, more than 2.4 million American Indians lived in counties with dental care shortage areas, including half of all American Indian children.

For these reasons, a strong interest exists to expand the use of dental health aide therapists (commonly referred to as dental therapists) outside of Alaska, where they have proven for the last decade to be a critical part of the health care delivery system and have been instrumental in reversing these unfortunate statistics. The more recent authorization of midlevel dental providers by the states of Minnesota, Maine, and Vermont, as well as Oregon's approval of dental workforce demonstration projects and the consideration of legislation by other states shows the effectiveness of, and demand for, these providers nationwide. This expansion will undoubtedly continue.

We appreciate IHS's consultation and ongoing efforts to expand the Community Health Aide Program (CHAP) outside of Alaska. We applaud the process IHS started with the release of its draft CHAP policy statement on June 1, 2016; however, we seek additional administrative actions on the part of the Department and IHS to solidify the use of dental therapists in Indian

country. Some actions should be taken before the end of the current Administration in January 2017, while others can proceed into the next Administration.

(1) **Issue Written Guidance Affirming the IHS's Commitment to Expanding Access to Oral Health Care Services in Indian Country**

Before the current Administration ends in January 2017, we request that you issue a "Dear Tribal Leader" letter, circular, or other official writing that affirms that IHS is committed to expanding access to oral health care services in Indian country.

Alternative dental practitioners such as dental therapists are an essential component of resolving the barriers to access to quality dental care for AI/AN people throughout the United States. Dental therapists are economically efficient for Indian health programs because they increase access and lower costs while maintaining the same quality of care as provided by a dentist.

As amended in 2010, Section 119 of the Indian Health Care Improvement Act (IHCIA) includes a restriction on dental therapists being utilized outside of Alaska only if these providers are under the umbrella of the CHAP program. That section states that "in establishing a national program … the Secretary … shall exclude dental health aide therapist services from services covered under the program." 25 U.S.C. § 1616l(d)(2). This exclusion is counter to the aim of increasing access to oral health services in Indian country.

We look forward to a total solution to this restriction on dental therapists working under the CHAP umbrella without state approval but, in the interim, we seek a statement of support for expanding the use of dental therapists throughout Indian country and instruction for IHS Area Offices' staff to provide support to tribes that are seeking to use dental therapists.

This written affirmation will be invaluable to those Tribes that wish to address immediate oral health needs in their communities by deploying dental therapists outside of a nationalized CHAP program. This written support could complement other laws, specifically the Indian Self-Determination and Education Assistance Act of 1975, as amended (ISDEAA).

As you know, the ISDEAA is the mechanism by which many Tribes administer health services and requires, among other things, that the Secretary interpret federal laws, executive orders, and regulations in a manner that facilitates the inclusion of programs and services in ISDEAA agreements, the implementation of compacts and funding agreements, and "the achievement of tribal health goals and objectives." 25 U.S.C. § 458aaa-11(a).

(2) **Include Language in the Fiscal Year 2018 Budget Request that would Amend Section 119 of the IHCIA**

While it is limited to the CHAP program, the language that was added to Section 119 of the IHCIA in 2010 that state laws may determine whether a Tribe or IHS may offer dental therapy services continues to be a troubling precedent for federal Indian law.

Accordingly, we request that the Department include language in its Fiscal Year 2018 budget justifications that would either eliminate the state law references in 25 U.S.C. § 1616l(d)(3)(A) or, alternatively, modify that provision to also allow dental therapists to be authorized under tribal law. This language should be added before the budget request is transmitted to Congress in early 2017.

Including such language in the FY 2018 budget request would recognize Tribes' inherent authority to regulate matters that directly affect their tribal citizens and it would not disturb any funding allocations that the Department may have already made for FY 2018.

(3) **Provide Technical Assistance to Tribes in Deploying Dental Therapists**

As we transition into the next Administration, IHS should provide Tribes, IHS Area Offices, and federally managed IHS Service Units technical assistance to incorporate dental therapists into their health care delivery systems. IHS and the Department should also fund existing programs that provide technical assistance to Tribes to enable Tribes to implement or explore all options for deploying dental therapists and increasing access to oral health services.

(4) **Ensure States adhere to CMS Guidance on Medicaid Coverage for Dental Therapists**

The ability of many Tribes to successfully incorporate dental therapists into their health care delivery systems will hinge on whether their services are covered by Medicaid. We request that the Centers for Medicare & Medicaid Services ensure that states adhere to the current guidance and reimbursement of dental therapists set forth in the CMCS Informational Bulletin dated July 10, 2014. Key statements from that guidance are referenced and quoted below:

- Definition of dental services: "Services performed by new types of dental professionals such as dental therapists and community dental health practitioners are considered to be "dental services" if the dental professional has some sort of supervisory relationship or agreement or affiliation with a dentist."
    - "Medicaid regulations define 'dental services' as those 'diagnostic, preventive or corrective procedures provided by or under the supervision of a dentist.' (See 42 Code of Federal Regulations § 440.100(a).)"
- Options for how states may reimburse for services: "States have two options for reimbursing for services provided by dental professionals (such as dental hygienists, dental therapists and community dental health practitioners) who are supervised by dentists but are not themselves dentists: (a) states may pay claims filed by the affiliated dentist for services rendered by the dental professional; or (b) states may allow the dental professionals to enroll as Medicaid providers and directly bill Medicaid using their own Medicaid provider identification numbers. Either way comports with federal requirements."

- All dental services meet EPSDT dental requirement, regardless of provider type or setting of care: "All 'dental services,' regardless of whether they are performed by a dentist or by another type of dental professional, such as a dental hygienist or a dental therapist working under the supervision of a dentist (including those with an agreement or affiliation with a dentist), and regardless of whether the services are provided in a dental office or in a school or community setting, meet the dental requirement in the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefit. (See 42 Code of Federal Regulations § 441.56(b)(1) and State Medicaid Manual (SMM) § 5132.2G.)"

We appreciate your attention to these important issues and look forward to working with you in the short term and going forward to implement them.

Sincerely,

Lester Secatero
Chairman
National Indian Health Board

Jacqueline Pata
Executive Director
National Congress of American Indians

Chief Kirk Francis
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Mark LeBeau, PhD, MS
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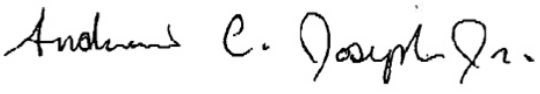

Andrew Joseph, Jr.
Chairman
Northwest Portland Area Indian Health Board

cc: Karen Diver, Special Assistant to the President—Native American Affairs