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Dear Tribal Leader:

The Indian Health Service (IHS), Tribes and Tribal organizations, and urban programs have been working to come into compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 Privacy Rule since its promulgation in January 2001. This letter addresses two issues that Tribes have brought to my attention.

The first issue is whether the Tribes are “covered entities,” i.e., whether Tribally operated programs are required to comply with the Administrative Simplification requirements of the HIPAA. The HIPAA applies to Government entities that would otherwise qualify as covered entities at the Federal, State, and Tribal levels. There are three types of covered entities: health plans, health care providers, and health care clearinghouses. Tribes, Tribal organizations, and urban programs can be subject to HIPAA as covered health plans, covered health care providers, or both. In its definition of a “health plan” covered by HIPAA, Congress included “the IHS programs under the Indian Health Care Improvement Act (IHCIA).” This statutory definition of “health plan” constitutes a reference to, *inter alia*, the IHS programs operated by the Tribes under the IHCIA pursuant to Title I contracts or Title V compacts. Therefore, Tribes with Title I contracts or Title V compacts must comply with the HIPAA Administrative Simplification requirements that apply to health plans. In addition, HIPAA’s requirements apply to Tribes that meet HIPAA’s definition of covered health care providers, i.e., health care providers that transmit health information in electronic form in connection with certain specified transactions for which the Secretary has adopted standards, Tribal sovereignty notwithstanding. Covered transactions include electronic submission of claims to Medicare, Medicaid, and other third-party payers. That is, Tribes and Tribal providers that conduct covered electronic transmissions of protected health information must comply with the HIPAA Administrative Simplification requirements that apply to health care providers.

The second issue is whether Tribes, Tribal organizations, and urban programs may continue to submit information to the IHS National Patient Information Reporting System (NPIRS). This information includes both demographic and encounter information about individual patients. The Privacy Rule prohibits disclosure of such individually identifiable information without authorization by the patient unless there is an applicable exception in the Privacy Rule.

In the case of NPIRS, Tribes, Tribal organizations, and urban programs may continue to submit data to NPIRS because the IHS is a public health authority authorized by law to collect the data. The Privacy Rule allows covered entities to submit individually identifiable health information without patient authorization to a public health authority authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including but not limited to the reporting of disease, injury, vital events such as birth

or death, and the conduct of public health surveillance, public health investigations, and public health interventions. 45 Code of Federal Regulations § 164.512(b)(i).

The IHS is a public health agency that is charged with providing health care to and conserving the health of American Indian and Alaska Native (AI/AN) people. The mission of the IHS is to ensure the highest possible health status for AI/ANs. As an agency of the Public Health Service (PHS), the IHS is authorized to collect information by § 301(a) of the PHS Act. The IHS uses information from NPIRS to carry out its responsibility to monitor and report to Congress on the health status of AI/ANs. The IHS also uses this information to perform epidemiological studies and disease surveillance. For these reasons, it is the position of the IHS that Tribes, Tribal organizations, and urban programs may continue to submit data to NPIRS because the IHS is collecting the data as a public health authority. The Department of Health and Human Services, Office for Civil Rights (OCR), which is charged with enforcement of the Privacy Rule, has advised us that the IHS position that it is acting as a public health authority is not inconsistent with OCR's prior advice, and OCR does not see any legal problems with this collection of information.

As the IHS and Tribes continue to implement the Privacy Rule, we are certain to encounter more challenges and issues. I look forward to continuing to work with you to resolve them as they arise.

Sincerely yours,

/ Charles W. Grim, D. /

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