



Jeff Lunardi
Chief Deputy Director
Department of Medical Assistance Services
600 East Broad Street
Richmond, Virginia
23219

Re: Proposed DMAS Changes

Dear Mr. Lunardi,

Allow me to express my sincere gratitude to you and your team for the time spent meeting with us to discuss the summary of DMAS's proposed changes, as described in your August 14, 2024, email.

The Nansemond Indian Nation has a robust government-to-government relationship with the Commonwealth, DMAS, and CMS. We must note, however, that the call on Thursday neither constitutes the full government-to-government consultation required by law nor conveys consent to DMAS's proposed changes. DMAS has outlined plans that, if implemented, will significantly and adversely impact the healthcare programs at Fishing Point Healthcare ("FPH"). While FPH is carefully assessing these plans, meaningful consultation cannot be fully realized until we receive a written explanation from DMAS outlining the legal basis for the proposed changes. It is essential that we all remain committed to the people we serve and our shared responsibilities. My hope is that we can collaboratively address these matters, ensuring that service delivery to our clients is not disrupted.

We recognize that DMAS may be navigating new territory in working with Indian tribes and tribal organizations that operate healthcare programs under Indian Self-Determination and Education Assistance Act ("ISDEAA") contracts with the federal Indian Health Service. Our conversation on Thursday morning revealed that DMAS's proposals may be based on misunderstanding or confusion regarding these operations, making it crucial that we engage in open consultation on these matters before any changes are implemented. The positions expressed by DMAS during the call raise significant concerns regarding the Nation's rights under federal law, potential conflicts with federal law and regulations, and our obligations under the Nation's ISDEAA contract with IHS. It is essential that DMAS fully understand relevant federal laws and regulations, how FPH operates under its ISDEAA contract, and its rights to bill and receive reimbursement from CMS, before moving forward with any proposed changes. We write to identify a few key concerns that need to be addressed.

First and foremost, the primary issue appears to stem from DMAS's recent change of interpretation of the Commonwealth of Virginia's Medicaid contract with CMS. While we understand that DMAS's position is that the plan does not allow a tribal healthcare organization to provide PCA and other waiver services, this contradicts DMAS's longstanding interpretation that the plan does, in fact,

provide for these services. Federal law and regulations explicitly reaffirm and protect these rights, and failing to recognize them constitutes a violation of these regulations. The suggestion that the state plan can override our federally protected rights and obligations is problematic.

Second, DMAS's stated intention to move current FPH clients to other health care providers is highly concerning. This approach creates unnecessary barriers for our established clients to receive the care they need and to which they are entitled, and it raises the question of whether DMAS's proposed action is discriminatory toward our tribal program and our clients versus the interests of non-tribal providers. We strongly urge DMAS to collaborate with us before taking any steps to divert our established clients to other programs.

Finally, as your team acknowledged during our call, we have been operating our business and billing practices based on agreements made with DMAS. We have invested in building the sophisticated infrastructure necessary to provide world-class healthcare to our clients, all of whom need the quality healthcare that FPH provides. DMAS's proposals to unilaterally alter these agreements have the potential to not only significantly undermine FPH's current program and economic viability, but also the wellbeing of our clients.

Given these concerns, we respectfully request a call this week to further discuss the proposed changes. Additionally, we ask that DMAS provide us with a written explanation detailing the legal reasoning behind these changes. Following that, we seek to engage in full and meaningful consultation before any final decisions are made or implemented.

Thank you again for your time and consideration. We look forward to your prompt response.

Sincerely,



David Darling
Chairman of the Board
Fishing Point Healthcare

Nansemond Indian Nation

cc: Greg Workheiser
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