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September 7, 2012

## GENERAL MEMORANDUM 12-111

### CMS Clarifies Trust Settlement Per Capita Payments to be Excluded as Income for Medical Assistance Eligibility

The Centers for Medicare and Medicaid Services (CMS) has recently clarified that per capita payments from trust accounts resulting from *Cobell v. Salazar* and similar tribal trust administration settlements are excluded as income or resources for determining eligibility for Social Security benefits, including Medicaid and the Children's Health Insurance Program (CHIP). See the attached CMS Region VIII Regional Information Letter addressed to State Medicaid Directors, dated August 15, 2012. In addition, the State of Washington Health Care Authority sent a letter to tribal leaders on August 24, 2012, to notify tribes that as a result of CMS guidance, per capita payments issued to tribal members as a result of federal tribal trust settlements would be exempt as income and resources for medical assistance in that state for a period of one year.

In the absence of such clarification, per capita payments could negatively affect eligibility for benefits like Medicaid by raising a per capita recipient's income above the income cap for Medicaid eligibility, if state agencies determined to include the payments as income. These recent developments suggest that CMS will not permit the states to do so.

The Washington Health Care Authority Letter seeks specific information from tribes in that state, including the date and amount of any per capita payments made to tribal members, in order to implement a system of identification, verification, and documentation of per capita payments which will be exempt as income for eligibility purposes. Tribes should be aware that different state Medicaid agencies may take different approaches to implementation if and when they receive similar guidance from CMS to exempt trust settlement per capita payments.

On another issue related to *Cobell* and other tribal trust administration settlements, see our General Memorandum 12-112 (September 7, 2012) concerning the Internal Revenue Service clarification regarding the tax status of these per capita payments.

Please let us know if you would like further information on these developments.

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Inquiries may be directed to:  
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**DEPARTMENT OF HEALTH & HUMAN SERVICES**

Centers for Medicare & Medicaid Services

Region VIII

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**REGIONAL INFORMATION LETTER**

RIL NO. 12-02  
DATE: August 15, 2012  
TO: State Medicaid Directors  
SUBJECT: Tribal Settlements and Medicaid

Due to a number of questions the Centers for Medicare and Medicaid Services (CMS) Regional Office has received from many State Medicaid Agencies, we wanted to provide this informational letter regarding Tribal settlements and their impact on eligibility for federally-assisted public assistance benefits.

Any settlement/judgment funds distributed to members of Indian tribes per capita or otherwise through trust accounts, as such, are excluded from consideration as income or resources. P.L. 93-134 excludes these funds from resources for ALL Social Security Act (SSA) benefits. The SSA guidance does apply to Medicaid/CHIP eligibility for treatment of income and resources. In addition ARRA 5006(b) excludes ALL payments from judgment or trust funds from counting as income or resources even when the payments exceed \$2,000 in a year. Please see the January 22, 2010 State Medicaid Director's (SMD) letter.

If you have any questions please call Cindy Smith, the Native American Coordinator (NAC) for Region VIII 303-844-7041 or email at [Cindy.Smith@cms.hhs.gov](mailto:Cindy.Smith@cms.hhs.gov).

Sincerely,



Richard C. Allen

Associate Regional Administrator

Division of Medicaid & Children's Health Operations



STATE OF WASHINGTON  
**HEALTH CARE AUTHORITY**

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August 24, 2012

**SUBJECT: Tribal Trust Accounting and Management Lawsuits**

Dear Tribal Leader:

The purpose of this letter is to share information concerning recent federal tribal trust settlements and how they may affect your tribal members' eligibility for medical assistance programs.

The Health Care Authority (HCA) received guidance from the Centers for Medicare and Medicaid Services (CMS) that per capita payments issued as a result of the Nez Perce, et al v. Salazar lawsuits are exempt as income for medical assistance, and exempt as a resource, as long as the funds are separately identifiable from countable resources. Settlement payments made directly to tribal members as a result of Cobell, et al v. Salazar are also exempt as income for medical assistance, and exempt as a resource, for a period of one year.

HCA is working on a notice to eligibility staff explaining how to verify and document these exempt payments. We want to ensure that HCA clients do not have their coverage interrupted. An email alert has already been sent to state staff regarding one tribe's distribution of per capita payments. If your tribe would like to make similar arrangements please contact us. Our staff will need to confirmation the following elements:

- The distribution is a per capita payment funded by the Nez Perce, et al v. Salazar or a Tribal Trust Accounting and Management settlement.
- The amount of the per capita payment (including shares or special treatment for minors).
- The date that it will be sent to tribal members.

This information will confirm that the payments are exempt and give state staff the information they need to properly document the information.

Since we have staff from all over the state processing cases, we also encourage your administrations to provide a contact name for our staff so they know who to contact when state staff need to verify a payment for a tribal member. If you have a specific process our staff should follow to obtain the information, please share details so we can make staff aware.

Please feel free to contact us if there is anything we can do to be of assistance. The agency's goal is to help identify these funds so tribal members do not lose health care coverage if the funds are not clearly identified as exempt.

You may contact either of the staff below if you require further information or would like to arrange for an alert to state staff.

- Kevin Cornell, Health Care Authority, Kevin.cornell@hca.wa.gov, (360) 725-1423
- Deborah Sosa, Health Care Authority, Deborah.sosa@hca.wa.gov, (360) 725-1649

Very truly yours,



Manning Pellanda, Assistant Director

cc: IPAC Delegates  
Tribal TANF/Social Services Directors  
ESA Directors  
Sheryl Lowe, Executive Director, American Indian Health Commission for Washington State  
Robin Arnold-Williams, Secretary, WA State Department of Social and Health Services  
MaryAnne Lindeblad, Director, WA State Health Care Authority  
Colleen Cawston, Executive Director, Office of Indian Policy, WA State Department of Social and Health Services  
David Armes, Financial Program Manager, Home and Community Services, WA State Department of Social and Health Services  
Deb Sosa, Tribal Program Manager and Agency Tribal Liaison, WA State Health Care Authority  
Mike Mowrey, Tribal Relations Program Manager, WA State Department of Social and Health Services  
Nathan Johnson, Assistant Director, Health Care Policy, WA State Health Care Authority  
Jim Stevenson, Chief Communications Officer, WA State Health Care Authority  
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