



December 6, 2023

REVISED AGREEMENT BETWEEN
DEPARTMENT OF VETERANS AFFAIRS VETERANS HEALTH ADMINISTRATION
AND
DEPARTMENT OF HEALTH AND HUMAN SERVICES INDIAN HEALTH SERVICE
FOR
REIMBURSEMENT FOR HEALTH CARE & RELATED SERVICES

I. PURPOSE

A. This Reimbursement Agreement (Agreement) is intended to facilitate reimbursement by the Department of Veterans Affairs (VA) to the Indian Health Service (IHS) for health care and related services provided by the IHS to eligible American Indian/Alaska Native (AI/AN) Veterans as defined herein.

B. This Agreement establishes the basic underlying terms for reimbursement from VA to the IHS.

C. This Agreement replaces the prior agreement between the parties regarding reimbursement for direct health care services, originally executed on December 5, 2012, and amended four times.

II. AUTHORITY

25 U.S.C. § 1645 and 38 U.S.C. § 8153.

III. SCOPE

This Agreement governs reimbursement for health care and related services provided to Eligible AI/AN Veterans by or through the IHS-operated health care facilities and programs. These services are further described in Section V.

IV. DEFINITIONS

A. All Inclusive Rate (AIR): means the rates approved each year by the Director of IHS, under the authority of sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. §§ 248 and 249(b)), Public Law 83-568 (42 U.S.C. § 2001(a)), and the Indian Health Care Improvement Act (25 U.S.C. § 1601 et seq.). These rates are published annually in the Federal Register.

B. Direct Care Services: means any health service that is provided directly by the IHS, including services delivered through telehealth. “Direct Care Services” does not include care or services provided by the IHS through the IHS Purchased/Referred Care program for care provided outside of the facility.

C. IHS-VA Claims Processing Guide: means the written document mutually agreed to by VA and the IHS, which outlines the process for claims submission and adjudication between the IHS and VA.

D. Contracted Travel: means services provided by the IHS to Eligible AI/AN Veterans through a contract for travel described in 25 U.S.C. § 16211(b).

E. Eligible American Indian/Alaska Native (AI/AN) Veteran: means an AI/AN Veteran who is: (1) eligible for services from the IHS in accordance with 42 C.F.R. Part 136; and (2) is enrolled in VA’s system of patient enrollment in accordance with 38 U.S.C. § 1705 and 38 C.F.R.17.36, is eligible for hospital care and medical services under 38 U.S.C. § 1705(c)(2) and 38 C.F.R.17.37(a)-(c) notwithstanding the Eligible AI/AN Veteran’s failure to enroll in VA’s system of patient enrollment, or is otherwise eligible for services provided or paid for by VA. VA and the IHS are responsible for determining eligibility for health care services within their respective programs.

F. Purchased/Referred Care (PRC): formerly known as “contract health service,” shall have the same meaning as defined in 25 U.S.C. 1603(5).

G. Service Unit: means an administrative entity of the IHS through which services are provided, directly or by contract, to Eligible AI/AN Veterans.

H. Telemedicine: means the exchange of medical information from one site to another through electronic communication to improve a patient’s health. Examples of telemedicine include health care services delivered through videoconferencing, store-and-forward imaging, on-line patient portals, and/or audio communications.

V. REIMBURSABLE SERVICES

A. Direct Care Services. VA shall reimburse the IHS for Direct Care Services provided to Eligible AI/AN Veterans, at the rates set forth in Section VI, when: (1) the IHS provided the Direct Care Services by or through IHS-operated facilities/programs; and (2) at the time of care, the VA had the authority to provide or pay for the care through any means.

1. **Outpatient Pharmacy Services.** VA will reimburse for outpatient medications on the IHS formulary associated with the provision of Direct Care Services provided to an Eligible AI/AN Veteran.

B. PRC.

1. VA shall reimburse the IHS in accordance with section VII for care or services provided to Eligible AI/AN Veterans through IHS-operated PRC programs when: (1) the IHS paid the PRC claim on or after January 5, 2021; and (2) at the time of care, services, or payment, the VA had the authority to provide or pay for the care/services through any means.
2. For PRC care or services delivered between March 1, 2020 and January 5, 2021, and paid by the IHS, VA shall reimburse the IHS in accordance with Section VII for the following: (1) items and services as described in section 6006(b) of division F of the Families First Coronavirus Response Act (or the administration of such products) for eligible AI/AN Veterans; and (2) hospital care and medical services for covered Veterans for the treatment of the virus SARS-CoV-2 or COVID-19 reimbursable services do not include travel. With respect to these PRC claims for care or services provided between March 1, 2020 and January 5, 2021, the IHS will submit invoices to VA within 365 days of this Agreement's effective date.

C. Contracted Travel. VA shall reimburse the IHS in accordance with Section VIII for Contracted Travel when: (1) service occurred on or after January 5, 2021; and (2) at the time of the transportation or payment, the VA had the authority to provide or pay for such services through any means.

D. Preauthorization. Preauthorization by VA is not required for any of the reimbursable services within the scope of this Agreement, but VA may require the IHS to provide additional justification.

VI. REIMBURSEMENT RATES FOR DIRECT CARE SERVICES

A. Except to the extent inconsistent with the rate methodology explained herein, VA shall reimburse the IHS for Direct Care Services at rates based on Medicare payment methodologies. In the absence of Medicare rates and otherwise agreed upon rates specified herein, VA will pay the lesser of the local VA Fee Schedule amount or billed charges.

B. Inpatient Hospital Services. The reimbursement methodology under this section applies to all inpatient services furnished by the hospital, whether provided by part of a department, subunit, distinct part, or other component of a hospital including services furnished directly by the hospital or under arrangements with contract providers who provide Direct Care Services onsite in an IHS facility.

1. Payment for inpatient hospital services will be based upon the applicable prospective payment system (PPS). For example, reimbursement for inpatient hospital services shall be made per discharge based on the applicable PPS used by the Medicare program to pay for similar hospital services under 42 C.F.R. Part 412. This

methodology will be used under this Agreement to reimburse inpatient hospital services regardless of whether the IHS hospital participates in the Medicare program or is otherwise exempt from the PPS (e.g. Critical Access Hospitals).

2. For hospitals that furnish inpatient services but are exempt from PPS and receive reimbursement based on reasonable costs (for example, critical access hospitals (CAHs)), including provider subunits exempt from PPS, payment shall be made per discharge based on the reasonable cost methods established under 42 C.F.R. Part 413, except that the interim payment rate under 42 C.F.R. Part 413.70, subpart E shall constitute payment in full.
3. The inpatient rates set forth above do not include inpatient physician services and practitioner services. The inpatient physician and other practitioner services shall be reimbursed based on the Medicare physician fee schedule.

C. Outpatient Hospital Services and Freestanding Clinic Services. VA shall reimburse outpatient hospital and free-standing clinics for services provided to Eligible AI/AN Veterans at the all-inclusive rate (AIR). This rate is published annually in the Federal Register under the title: Outpatient per visit rate (excluding Medicare).

D. Ambulatory Surgical Service Centers. VA shall reimburse the IHS for services provided to Eligible AI/AN Veterans at established Medicare rates for freestanding Ambulatory Surgery Centers.

E. Home Health. VA shall reimburse Direct Care Home Health Services at the AIR.

F. Durable Medical Equipment, Prosthetics/Orthotics & Supplies (DMEPOS). VA shall reimburse DMEPOS at reasonable billed charges.

G. Outpatient Pharmacy Services: VA shall reimburse the IHS at the IHS's reasonable billed charges. VA Payment Operations will complete audits on the Outpatient Pharmacy and reserves the right to request the IHS Formulary information from the IHS.

VII. REIMBURSEMENT RATES FOR PURCHASED/REFERRED CARE (PRC)

VA shall reimburse the IHS for PRC at the actual cost paid by the IHS to the PRC provider/supplier.

VIII. REIMBURSEMENT RATES FOR CONTRACTED TRAVEL

VA shall reimburse the IHS for Contracted Travel at the actual cost paid by the IHS to the travel contractor. VA will only reimburse for Contracted Travel under this agreement.

IX. CLAIM SUBMISSION AND PAYMENT

A. Generally: Claims/invoice submissions must comply with the requirements outlined in the mutually agreed upon IHS-VA Claims Processing Guide.

B. Direct Care Services: Claims for Direct Care Services reimbursement should be submitted to VA electronically unless not feasible. If electronic submission is not feasible, claims submitted in paper form shall comply with the format required for the submission of claims under title XVIII of the Social Security Act or recognized under section 1175 of such Act.

C. Timely Filing Limitation: Claims and invoices shall be submitted to VA within 36 months from the date of service, unless there is good cause for delay or unless specified otherwise in this agreement.

D. Liable Payers:

1. **Direct Care:** The IHS shall seek payment from all other liable payers for Direct Care Services, to the extent feasible and as permissible by law, before seeking reimbursement from VA for Direct Care Services provided to an Eligible AI/AN Veteran under this Agreement. The IHS shall provide VA with copies of Other Health Insurance (OHI), Explanation of Benefits (EOB), Explanation of Payment (EOP), or similar documentation when the IHS receives payment from other liable payers and a balance remains. When IHS receives payment from other liable payers, VA is responsible for only the balance remaining, up to the agreed-upon rates.
2. **PRC:** The IHS is considered the payer of last resort for PRC, and as such, the use of alternate resources (defined in 42 CFR § 136.61) is required when such resources are available. This Agreement does not exempt or replace the IHS from being payer of last resort.

E. When multiple IHS-operated facilities coordinate care for a single episode of outpatient care, the IHS-operated facility with the patient encounter can claim the reimbursement of a single AIR payment from the VA. The IHS-operated facility that performs the professional component of the test is considered the primary provider.

F. No cost-sharing, co-payments, or other deductions may be subtracted from the reimbursements, charged to the Eligible AI/AN Veteran, or otherwise counted against any caps for the Eligible AI/AN Veteran.

G. In accordance with 25 U.S.C. § 1621f, all reimbursements received under this Agreement shall be credited to the IHS Service Unit by or through which such services were provided and shall be used as provided in 25 U.S.C. § 1641.

X. DENIAL, RECONSIDERATION, AND APPEAL

A. VA may only deny an invoice/claim or a portion thereof for services provided when:

1. The AI/AN patient is ineligible for VA services, or
2. The VA lacks the authority to provide or pay for the care or related services through any means, or
3. The information needed to adjudicate the invoice/claim is not provided, but only if VA has provided both notice to the IHS of the missing information and a reasonable opportunity to provide such information to VA.

B. If VA denies reimbursement for a claim listed above, VA shall notify the Service Unit of the denial in writing together with a statement of the reason for the denial. The notice shall advise that the Service Unit may obtain a reconsideration of the denial by submitting a request for reconsideration or appeal in writing, within one year of the notice, setting forth the grounds supporting the request or appeal, including any documentation requested by VA for reconsideration.

C. VA shall review and respond to a request for reconsideration or appeal. If the original decision is affirmed on reconsideration, the Service Unit shall be so notified in writing and advised that a notice of disagreement (NOD) may be submitted to VA within one year of the notice of the reconsidered decision. The NOD shall be in writing and shall set forth the grounds supporting the appeal. Ultimate decisions relating to NODs shall be reached in accordance with Section XI paragraph G of this Agreement.

XI. GENERAL PROVISIONS

A. Nothing in this Agreement shall be construed to shift the ultimate responsibility of any patient care from the Government, its physicians, and its other healthcare professionals. It is further understood the Agreement shall not impair the priority access of VA or IHS beneficiaries to health care provided through their respective agencies; the quantity or range of quality of health care services provided to VA or IHS beneficiaries by the respective health care programs; or the eligibility of VA or IHS beneficiaries to receive health care through their respective agencies. The terms of the Agreement shall not in any way alter or affect Congressional mandates imposed on the parties as governed by applicable law, regulation, or policy. Moreover, the intent of this Agreement is to expand the ability of each party to better and more efficiently meet its obligations to its respective beneficiaries.

B. Nothing in this Agreement affects the right of Eligible AI/AN Veterans to choose whether they receive Direct Care Services in VA or IHS facilities.

C. VA and the IHS will comply with all applicable Federal laws and regulations regarding the confidentiality of health information. Medical, health, and billing records of IHS patients are subject to some or all of the following laws: the Privacy Act, 5 U.S.C. § 552a; the Freedom of Information Act, 5 U.S.C. § 552; the Confidentiality of [Substance Use Disorder Patient] Records, 42 U.S.C. 290dd-2; Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, 45 C.F.R. Parts 160 and 164; Confidentiality of Medical Quality Assurance Records, 25 U.S.C. § 1675; the Patient Safety and Quality Improvement Act of 2005 and Federal regulations promulgated to implement those acts. Records of VA payment for services within the scope of this Agreement are subject to some or all of the following laws: the Privacy Act, 5 U.S.C. § 552a; the Freedom of Information Act, 5 U.S.C. § 552; Confidentiality of Certain Medical Records, 38 U.S.C. § 7332; Confidential Nature of Claims, 38 U.S.C. § 5701; the HIPAA Privacy Rule, 45 C.F.R. Parts 160 and 164; Medical Quality Assurance Records Confidentiality, 38 U.S.C. § 5705; the Patient Safety and Quality Improvement Act of 2005; and Federal regulations promulgated to implement those acts. Medical records created or maintained by IHS programs in the performance of providing Direct Care Services are not subject to VA confidentiality statutes. Records created or maintained by VA in the performance of reimbursing the IHS for health care and related services are not subject to IHS statutes.

D. VA and the IHS agree to abide by all physical and cyber security requirements as detailed in the Memorandum of Agreement between the Veterans Health Administration (VHA) and the IHS on Health Information Technology Sharing, dated September 24, 2008, and the Interconnection Security Agreement between the Department of Veterans Affairs and the Department of Health and Human Services dated September 22, 2008, or successor agreements.

E. For audit and examination purposes and to the extent permitted by Federal law, VA or any of its duly authorized representatives or agents shall have access to all books, documents, papers, and records of the IHS that are related or pertinent to this Agreement or any claim paid pursuant to this Agreement. To the extent permitted by law and when consistent with records retention schedules, said books, documents, papers, and records shall be made available until the expiration of five years after submission of any claim paid pursuant to this Agreement.

F. Exchange of Medical Records. To the extent permitted by law, the IHS shall provide VA with copies of medical records to support the claims submitted for reimbursement upon request from VA. The request from VA for medical records to support the claims does not need to be in writing and can be made verbally or through other agreed upon means, to the extent permitted by law. Copies of medical records exchanged under the Agreement shall belong to the recipient party, which will bear responsibility for information security and breach response with regard to those records.

G. If VA and the IHS are unable to agree about a material aspect of this Agreement or the resolution of invoice/claim denials, the parties agree to engage in an effort to reach mutual

agreement in the proper interpretation of this Agreement, including amendment of the Agreement, as necessary, by escalating the dispute within their respective organizations.

H. To the extent an Eligible AI/AN Veteran is eligible for VA hospital care and medical services but not enrolled, the IHS shall take steps to collaborate with the VA to assist the Eligible AI/AN Veteran in enrolling in VA's system of patient enrollment.

I. All medical malpractice claims arising under the Federal Tort Claims Act (FTCA) for incidents occurring under this Agreement shall be the responsibility of the IHS in accordance with applicable law and regulation and are not the responsibility of VA. Nothing in this paragraph shall be construed to expand the circumstances under which the FTCA applies. If VA receives a medical malpractice claim directly from an AI/AN Veteran that primarily involves medical care rendered by the IHS, VA will promptly notify HHS for care provided by the IHS by forwarding the claim to the Department of Health and Human Services Claims Officer, Washington, D.C. 20201. Where VA is identified as an involved party in a claim submitted to HHS or the IHS, the HHS Claims Officer will provide a copy of the claim and documents effecting resolution or disposition of the claim to the VA Office of General Counsel, Torts Law Group (021A), 810 Vermont Avenue, NW, Washington DC 20420.

J. Nothing in this Agreement shall be construed to limit or otherwise negatively influence the separate negotiations between VA and Tribal Health Programs or Urban Indian Organizations regarding their separate reimbursement agreements with VA, which the IHS is not a party to.

XII. EFFECTIVE DATE, TRANSITION, TERMINATION, AND AMENDMENT

A. Effective Date. This Agreement becomes effective on the date that the last signatory signs the agreement.

B. Transition. The parties will expeditiously implement the terms of this Agreement. VA continues to be responsible for any reimbursements due to the IHS under the prior agreement consistent with the terms of that Agreement.

C. Amendment. Except for cancellation, this Agreement may be revised or amended only by mutual written agreement signed by the signatories (or their authorized representatives) to this Agreement.

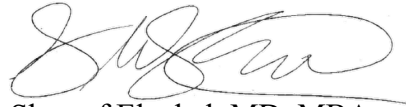
D. Cancellation. Either party may cancel this Agreement at any time by providing a 60-day written notice of the intent to cancel the Agreement to the signatories (or their authorized representatives) to this Agreement. The parties agree to engage in efforts to reach mutual agreement on a new or revised agreement prior to cancellation of this Agreement and will escalate disputes within their respective organizations, as necessary, to avoid lapses in the agreement(s).

E. Funding. VA's obligations under this Agreement shall be subject to the availability of appropriated funds.

Roselyn Tso
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Roselyn Tso -S
Date: 2023.12.06
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Roselyn Tso
Director
Indian Health Service



Shereef Elnahal, MD, MBA
Under Secretary for Health
Veterans Health Administration