

For the reasons set forth in the preamble, the Indian Health Service proposes to amend 42 CFR chapter I as set forth below:

PART 136—INDIAN HEALTH

1. The authority citation for part 136 continues to read as follows:

Authority: 25 U.S.C. 13; 42 U.S.C. 1395cc (a) (1) (U), 42 U.S.C. 2001 and 2003, unless otherwise noted.

2. Add new subpart I consisting of §§ 136.201 and 136.202, to read as follows:

Subpart I—Limitation on Charges For and Non-Hospital-Based Care

Sec.

Deleted: Health Care Professional Services

136.201 Payment for physician and other health care professional services purchased by Indian health programs and other medical charges associated with non-hospital-based care.

136.202 Authorization by urban Indian organizations.

§ 136.201 Payment for services purchased by Indian health programs and other medical charges associated with non-hospital-based care.

(a) Payment for non-hospital-based entities, including non-hospital based physicians and professional services, for any level of care authorized under part 136, subpart C by a Purchased/Referred Care (PRC) program of the Indian Health Service (IHS); or authorized by a Tribe or Tribal organization carrying out a PRC program of the IHS under the Indian Self-Determination and Education Assistance Act, as amended, Public Law 93-638, 25 U.S.C. 450 et seq.; or authorized for purchase under § 136.31 by an urban Indian organization (as that term is defined in 25 U.S.C. 1603(h)) (hereafter “I/T/U”), shall be determined based on the applicable method in this section:

The I/T/U will pay the lowest of the following amounts:

(1) The applicable Medicare payment amount, including payment according to a fee schedule, a prospective payment system or based on reasonable cost (“Medicare

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rate”) for the period in which the service was provided, or in the event of a Medicare waiver, the payment amount will be calculated in accordance with such waiver.

(2) An amount that has been negotiated with a specific provider or its agent, or supplier or its agent by the I/T/U or the amount negotiated by a repricing agent if the provider or supplier is participating within the repricing agent's network and an I/T/U has a pricing arrangement or contract with that repricing agent. For the purposes of this section, repricing agent means an entity that seeks to connect I/T/U with discounted rates from non-I/T/U public and private providers as a result of existing contracts that the non-I/T/U public or private provider may have within the commercial health care industry.

(3) The amount that the provider or supplier accepts as payment for the same service from nongovernmental entities, including insurance providers.

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(b) Exception.

(1) Subpart (a) shall apply to a Tribe or Tribal organization under the Indian Self-Determination and Education Assistance Act, as amended, Public Law 93-638, 25 U.S.C. 450 et seq., and urban Indian organizations (as that term is defined in 25 U.S.C. 1603(h) only at the election of the Tribe, Tribal organization or urban Indian organization.

(2) The I/T/U, either directly or through a repricing agent, may elect to negotiate a rate that is more than the rate described in paragraph (a) of this section with a non-hospital based entity, but in no event shall ¹⁵ such rate be higher than the lowest rate

the non-hospital based entity certifies to the I/T/U that it accepts as payment for the same service from nongovernmental entities, including insurance providers.

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(c) Coordination of benefits and limitation on recovery: If an I/T/U has authorized payment for items and services provided to an individual who is eligible for benefits under Medicare, Medicaid, or another third party payer--

(1) The I/T/U is the payer of last resort under 25 U.S.C. 1623(b);

(2) If there are any third party payers, the I/T/U will pay the amount for which the patient is being held responsible after the provider or supplier of services has coordinated benefits and all other alternate resources have been considered and paid,

including applicable co-payments, deductibles, and coinsurance that are owed by the patient; and

(3) The maximum payment by the I/T/U will be only that portion of the payment amount determined under this section not covered by any other payer; and

(4) The I/T/U payment will not exceed the rate calculated in accordance with paragraph (a) or (b) of this section (plus applicable cost sharing); and

(5) When payment is made by Medicaid it is considered payment in full and there will be no additional payment made by the I/T/U to the amount paid by Medicaid.

(d) Authorized services: Payment shall be made only for those items and services authorized by an I/T/U consistent with part 136 of this title or section 503(a) of the Indian Health Care Improvement Act (IHCIA), Public Law 94-437, as amended, 25 U.S.C 1653(a).

(e) No additional charges.

(1) The health care provider or supplier shall be deemed to have accepted the applicable Medicare payment amount, including payment according to a fee schedule, a prospective payment system or based on reasonable cost (“Medicare rate”) for the period in which the service was provided), or other payment amount in accordance with paragraph (b) of this Section, as payment in full if:

(i) The services were provided based on a PRC referral authorized for payment; or,

(ii) The health care provider or supplier submits a Notification of a Claim for payment to the I/T/U; or

(iii) The health care provider or supplier accepts payment for the provision of services from the I/T/U.

(2) A payment made and accepted in accordance with this section shall constitute payment in full and the provider or its agent, or supplier or its agent, may not impose any additional charge—

(i) On the individual for I/T/U authorized items and services; or

(ii) For information requested by the I/T/U or its agent or fiscal intermediary for the purposes of payment determinations or quality assurance.

(e) For all non-hospital-based entities, including non-hospital based physicians and health care professionals required by law to accept the rates specified in this section, the applicable rate shall be the lowest of any amount calculated under paragraph (a) or (b) of this section, without regard to paragraph (d)(1) of this section.

(f) No service shall be authorized and no payment shall be issued in excess of the rate authorized by this Section.

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§ 136.202 Authorization by an urban Indian organization.

An urban Indian organization may authorize for purchase items and services for an eligible urban Indian (as those terms are defined in 25 U.S.C. 1603(f) and (h)) according to section 503 of the IHCA and applicable regulations. Services and items furnished by non-hospital-based entities including non-hospital based physicians and other health care professionals shall be subject to the payment methodology set forth in § 136.201.

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