DRAFT AGREEMENT
BETWEEN
DEPARTMENT OF VETERANS AFFAIRS
AND
DEPARTMENT OF HEALTH AND HUMAN SERVICES
INDIAN HEALTH SERVICE
FOR
REIMBURSEMENT FOR DIRECT HEALTH CARE 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) and Tribal health programs (as defined herein) that have executed a participating Tribal health program agreement, as described below in section II for certain health care services, specifically Direct Care Services (as defined herein) provided by the IHS or Tribal health program to eligible American Indian/Alaska Native (AI/AN) Veterans as defined herein.

B. IHS and VA are entering into this agreement to improve access to direct care services for Eligible AI/AN Veterans. This agreement establishes the basic underlying terms for reimbursement that will be carried out by local implementation plans with IHS or consistent with section II, Tribal health programs.

C. This Agreement will be implemented through local implementation plans for a demonstration project period at sites determined by VA and IHS. Reimbursements for Direct Care Services described in this Agreement initially will be authorized at only the agreed upon demonstration project sites and only for the duration as determined by VA and IHS. Once the demonstration project period has concluded, VA and IHS will transition to national implementation. Local implementation plans will be developed within 3 months of the completion of the demonstration.

D. The parties to this agreement agree to address reimbursement for other reimbursable services not covered by this Agreement at a later date.

II. PARTICIPATING TRIBAL HEALTH PROGRAM AGREEMENT

It is the intention of the Parties (IHS and VA) that an Indian Tribe or Tribal organization that operates any health program, service, function, activity, or facility funded, in whole or part, by IHS through, or provided for in, a contract or compact with IHS under the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450 et seq.) seeking reimbursement from VA for Direct Care Services for Eligible AI/AN Veterans furnished at their facilities will execute a

participating Tribal health program agreement with a local VA facility (e.g., VA Medical Center (VAMC), Veterans Integrated Service Network (VISN)) by which the Tribal health program agrees to be bound by the terms and conditions contained in this Agreement. If a Tribal health program will not agree to any term(s) or condition(s) set forth in this Agreement, the Parties shall consult with one another to address the Tribal health program's concerns and consider alternate language for the participating Tribal health program agreement.

III. SCOPE

This Agreement governs reimbursement for Direct Care Services provided to Eligible AI/AN Veterans by:

A. IHS operated health care facilities and programs; and

B. Tribal health programs that

1. Are carried out under a contract or compact with the Indian Health Service pursuant to the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §450 et seq., and;

2. Have executed a participating Tribal health program agreement to be bound by the terms contained herein.

IV. DEFINITIONS

Direct Care Services: The term ‘‘Direct Care Services’’ means any health service that is provided directly by IHS or a Tribal health program.

Eligible American Indian/Alaska Native (AI/AN) Veteran: The term “Eligible American Indian/Alaska Native (AI/AN) Veteran” means an AI/AN Veteran who is (1) eligible for services from 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 or is eligible for hospital care and medical services under 38 U.S.C. § 1705(c)(2) notwithstanding the Eligible AI/AN Veteran’s failure to enroll in VA’s system of patient enrollment.

VA and IHS or the Tribal health program are responsible for determining eligibility for health care services within their respective programs.

Service Unit: The term ‘‘Service Unit’’ means an administrative entity of the IHS or a Tribal health program through which services are provided, directly or by contract, to Eligible AI/AN Veterans within a defined geographic area.

Tribal health program: The term ‘‘Tribal health program’’ means an Indian Tribe or Tribal organization that operates any health program, service, function, activity, or facility funded, in whole or part, by IHS through, or provided for in, a contract or compact with IHS under the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450 et seq.). For purposes of this agreement, all references to “Tribal heath program” are to Tribal health programs (as defined in the preceding sentence) that have executed a participating tribal health program agreement.

V. REIMBURSABLE SERVICES

VA will reimburse only for Direct Care Services provided in the Medical Benefits package available to Veterans at 38 C.F.R. § 17.38. VA will not reimburse for any services that are excluded from the Medical Benefits package or for which the eligible AI/AN Veteran does not meet qualifying criteria.

VI. QUALITY

A. All IHS and Tribal health programs (hospitals, freestanding ambulatory clinics) that qualify for reimbursement for services under this agreement must meet requirements for the Centers for Medicare and Medicaid (CMS) certification (Conditions of Participation/Conditions of Coverage) or the accreditation standards of organizations deemed by CMS, such as The Joint Commission (TJC) or the Accreditation Association for Ambulatory Health Care (AAAHC).

B. VA, IHS, and Tribal health programs agree to continue to work cooperatively to improve the quality of care that is provided to AI/AN Veterans. IHS, Tribal health programs and VA therefore agree to begin or continue the following activities:

1. At least annually, sharing of data on mutually agreed upon quality measure sets generally accepted by national accreditation organizations and national quality organizations, such as the National Committee for Quality Assurance (NCQA), the National Quality Forum (NQF), CMS, the Agency for Healthcare Research and Quality (AHRQ) or TJC, either electronically or through paper reports.

2. At least annually, sharing of information on medical quality assurance activities for each participating IHS or Tribal health program. In support of administrative efficiencies, VA, Tribal health programs and IHS agree to use existing medical quality assurance activities as required under accreditation or certification unless otherwise agreed upon. These activities will include periodic review of care utilization (health system level trends) and care delivery consistent with current standards of care and evidence-based practices.

3. Developing a process consistent with applicable privacy laws to share patient summary information (summary of care documents) electronically through the Nation Wide Health Information Network.

4. Agree to meet requirements for Meaningful Use of electronic health records (EHR) and to report on Meaningful Use clinical quality measures as required by Medicare or Medicaid.

5. Meeting at least annually with representatives from a representative sample of IHS and Tribal health programs to review the overall quality of care provided to AI/AN Veterans served under this agreement and implementing joint system-wide quality improvement activities as needed.

6. Convening ad hoc meetings to discuss program-specific quality issues if issues or concerns develop.

7. Developing a joint patient advocacy/ombudsman process to address appeals on patient grievances and complaints that are not resolved at the local VA, IHS or Tribal health program level.

8. Working with Tribal health programs to implement or continue to implement a patient-centered medical home model to improve the coordination of care and improve access to quality care for patients served under this agreement.

VII. REIMBURSEMENT FOR DIRECT CARE SERVICES

A. Except to the extent inconsistent with the rate methodology explained herein, VA shall reimburse at rates based on Medicare payment methodologies for services, including home and community based services, to Eligible AI/AN Veterans.

B. Inpatient Hospital Services. Except to the extent inconsistent with the rate methodology explained herein, VA shall reimburse at rates based on Medicare payment methodologies for services to Eligible AI/AN Veterans. The payment 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 or Tribal health facility).

1. Payment for hospital services that the Medicare program would pay under a prospective payment system (PPS) will be based on the applicable PPS. For example, payment 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.

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, 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 billed based on the Medicare fee schedule.

C. Outpatient Hospital Services and Freestanding Clinic Services. VA shall pay for outpatient and free standing clinics services to Eligible AI/AN Veterans at the all inclusive rate 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.). This rate is published annually in the Federal Register under the title: Outpatient Per Visit Rate (Excluding Medicare).

D. Federally Qualified Health Centers. For facilities reimbursed by Medicare at the Medicare Federally Qualified Health Center Rate, VA shall pay for services to Eligible AI/AN Veterans at the Medicare Federally Qualified Health Center rate.

E. Ambulatory Surgical Services. VA shall reimburse for services to Eligible AI/AN Veterans at established Medicare rates for freestanding Ambulatory Surgery Centers.

F. Inpatient Pharmacy Services/Outpatient Pharmacy Services/Take-Home Drugs. VA agrees to provide reimbursement for inpatient medications for Eligible AI/AN Veterans receiving direct inpatient care in IHS and Tribal hospitals. For outpatient medications, IHS, Tribes and VA agree to use the VA Consolidated Mail Outpatient Pharmacy (CMOP) for routine/ongoing/regular prescriptions written for Eligible AI/AN Veterans under this agreement. VA agrees to provide reimbursement of the cost of medication dispensed for the provision of outpatient emergent need prescriptions or other outpatient prescriptions requiring provision to eligible patients to initialize or continue therapy before CMOP can provide. In those instances, those prescriptions are to be limited to not more than a 14-day (Alaska: 30-day) supply.

G. Rate Review. VA will conduct reviews of the rates of services provided under this agreement during the demonstration. VA and IHS will compare the encounter rate against the CMS fee schedule to determine if the payments to the Indian Health or Tribal facilities are within an acceptable range.

VIII. APPLICABLE COPAYMENT

To the extent they are legally required, VA's requirement for copayments for certain Veterans cannot be waived under this agreement; however, VA and IHS have discussed the possibility of IHS and Tribal facilities covering any applicable VA copayment required of the Veteran, and VA will work with IHS and Tribal Organizations to develop a process.

IX. CLAIM SUBMISSION AND PAYMENT

A. Claims for 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. For example, claims submitted in paper may be printed on forms such as a CMS 1450, ADA, CMS 1500, or NCPDP. Claims submitted electronically shall comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) standards for electronic transactions.

B. Payment to each IHS operated Service Unit will be made upon receipt and processing of the claim, through industry standards. Adjustments to a claim will be provided to IHS via industry standard Explanation of Benefits (EOB). Any disputes will be jointly reviewed by VA and IHS staff to resolve.

C. Payment to each Tribally-operated Service Unit will be made upon receipt and processing of the claim, through industry standards. Adjustments to a claim will be provided to Tribal health program via industry standard Explanation of Benefits (EOB). Any disputes will be jointly reviewed by VA and Tribal staff to resolve.

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

E. IHS and participating Tribal health programs may, consistent with applicable privacy laws, provide VA 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 methods. Upon disclosure, copies of medical records exchanged under the agreement shall belong to the recipient agency, which will bear responsibility for information security and breach response with regard to those records.

F. If IHS or a Tribal health program seeks reimbursement under this agreement, and VA provides reimbursement for the Direct Care Services provided to an Eligible AI/AN Veteran, IHS or the Tribal health program may not seek reimbursement for such care from entities other than VA. VA shall retain the right to bill an Eligible AI/AN Veteran's third party insurer to the extent permitted by 38 U.S.C. 1729. When an Eligible AI/AN Veteran is treated by IHS or a Tribal health program under this agreement, IHS or such Tribal health program shall, consistent with applicable privacy laws, provide VA with any applicable information on each Eligible AI/AN Veterans' private insurance, Workers' Compensation coverage, Medicare Supplemental Insurance information, and information with respect to third-party tortfeasor cases arising under the Federal Medical Care Recovery Act (FMCRA), 42 U.S.C. 2651. If IHS or a Tribal health program seeks reimbursement under the terms of this agreement for Direct Care provided to eligible AI/AN Veterans with third party insurance who are being treated for HIV, sickle cell anemia, drug or alcohol abuse, IHS or the Tribal health program shall seek to obtain from the

Eligible AI/AN Veteran and provide to VA a fully executed VA Form 10-5345, "Request For and Authorization To Release Medical Records or Health Information" so that VA may pursue reimbursement for medical care for any claims arising under 38 U.S.C. 1729. If IHS or a Tribal health program seeks reimbursement under the terms of this agreement for Direct Care provided to eligible AI/AN Veterans that IHS or the Tribal health program have determined have been injured due to the negligence of a third party under the Federal Medical Care Recovery Act (FMCRA), 42 U.S.C. 2651, IHS or the Tribal health program shall seek to obtain from the Eligible AI/AN Veteran and provide to VA a fully executed VA Form 4763, Power of Attorney and Assignment, and VA Form 10-5345, "Request For and Authorization To Release Medical Records or Health Information" so that VA may pursue reimbursement.

G. Payment to IHS or the Tribal health program will be made by VA only after the AI/AN Veteran for which payment is sought, is determined by VA to be an Eligible AI/AN Veteran and only to the extent authorized for that Eligible AI/AN Veteran under VA statutes and regulations. This agreement governs payment for only those Direct Care Services provided to Eligible AI/AN Veterans after the effective date of this agreement. For an individual who applies for enrollment in VA's system of patient enrollment and is subsequently determined to be an eligible AI/AN Veteran, VA will reimburse for Direct Care services provided back to the date of the individual's application for enrollment, but for only those Direct Care Services provided to the Eligible AI/AN Veteran after the effective date of this agreement**.** When IHS or the Tribal health program identifies Veterans who do not wish to enroll in VA's system of patient enrollment, VA and IHS or the Tribal health program will establish a process to determine eligibility.

H. Timely Filing: Claims for services provided after the effective date of this agreement, not submitted to VA within 12 months of the date of service, shall not be reimbursed by VA.

X. RECONSIDERATION AND APPEAL

A. VA may only deny a claim or a portion of a claim for services for the AI/AN Veteran when:

1. Ineligible for VA services, or
2. The care or services provided are not Direct Care Services, or
3. The care or services provided are not reimbursable services such as those described in Section VI, or
4. The claim was not submitted on a nationally recognized standard format, such as the CMS (Center for Medicare Services) Form 1500 (which replaced the HCFA (Health Care Financing Administration) Form 1500), or the UB-04 (Universal Billing, which replaced the UB-92), the ANSI (American National Standards Institute) Form X12 837, or the NCPDP (National Council for Prescription Drug Programs), or
5. The information needed to adjudicate the claim, consistent with the information contained on the electronic HCFA and UB forms, is not provided.

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 within 30 days of receipt. 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. If the claimant continues to disagree after VA review of the NOD, VA will inform the claimant of further appellate rights for an appeal to the Board of Veterans Appeals (38 CFR §§17.132 & 17.133).

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, IHS, or Tribal health program facilities.

C. VA, IHS and participating Tribal health programs will comply with all applicable Federal laws and regulations regarding the confidentiality of health information. Medical, health and billing records of IHS and Tribal health program 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 Drug Abuse Prevention, Treatment, and Rehabilitation Act, 21 U.S.C. § 1101, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act, 42 U.S.C. § 4541, the Administrative Simplification requirements of HIPAA, 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. Patient records of a Tribal health program are not considered Federal records for the purposes of chapter 5 of title 5 of the United States Code (including the Privacy Act and the Freedom of Information Act). Records of VA payment for direct care services 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 Administrative Simplification requirements of HIPAA, 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. All requirements of HIPAA will be met before there is any sharing of identifiable patient information. Copies of medical records exchanged under the agreement shall belong to the recipient agency, which will bear responsibility for information security and breach response with regard to those records.

D. VA, IHS and to the extent applicable, participating Tribal health programs, agree to abide by all physical and cyber security requirements as detailed in the Memorandum of Agreement between the Veterans Health Administration (VHA) and 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. This Agreement may be revised or amended only in writing by VA and IHS.

F. 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 IHS and the Tribal health program that are related or pertinent to this agreement or any claim paid pursuant to this agreement. Said books, documents, papers, and records shall be made available until the expiration of three years after submission of any claim paid pursuant to this agreement.

G. If VA and IHS are unable to agree about a material aspect of this Agreement, 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, IHS or the Tribal health program shall take steps to collaborate with the VA to assist the Eligible AI/AN Veteran in enrolling in VA's system of patient enrollment. VA and IHS or the Tribal health program will develop a standard operating procedure to address those cases where Eligible AI/AN Veterans are not required to enroll for health care services and choose not to enroll.

I. All medical malpractice claims arising under the Federal Tort Claims Act (FTCA) for incidents occurring at IHS facilities or arising from care rendered to Indian Veterans by Tribal health providers under this agreement shall be the responsibility of the IHS or the Tribes in accordance with applicable law and regulation and are not the responsibility of VA. If VA receives a medical malpractice claim directly from an Indian Veteran that primarily involves medical care rendered by IHS or a Tribal health provider, VA will promptly notify the designated Tribe point of contact for Tribal health providers, or HHS for care provided by the

Indian Health Service by forwarding the claim to 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, IHS or a Tribal facility, 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 (021B), 810 Vermont Avenue, NW, Washington DC 20420).

XII. IMPLEMENTATION

VA and IHS will schedule joint orientation/implementation planning meetings between regional VISN, IHS Area Office, IHS Service Unit and business office staff, VA business office staff, VHA Operational staff, tribal leadership and tribal health directors, and others as necessary, for each demonstration site.

XIII. PERIOD OF AGREEMENT

This Agreement becomes effective upon the latest signatory date below for a period of one year.

ACCEPTED:

DEPARTMENT OF VETERANS AFFAIRS

By: _____
Robert A. Petzel, M.D.
Under Secretary for Health

Date: _____

ACCEPTED:

DEPARTMENT OF HEALTH AND HUMAN SERVICES
INDIAN HEALTH SERVICE

By: _____
Yvette Roubideaux, M.D., M.P.H.
Director

Date: _____