



AUG 8 2013

Dear Tribal Leader:

I am writing to inform you of the resolution of a coordination of benefits issue related to emergency care provided to eligible American Indian and Alaska Native (AI/AN) veterans. This resolution will affect the payment order for the Department of Veterans Affairs (VA), the Indian Health Service (IHS), and Tribal health programs. Health programs that fall within the following authority pay after the VA for services provided to AI/AN veterans.

Section 2901(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, (Affordable Care Act) makes IHS, Tribal, and Urban Indian health programs the payers of last resort for services provided to beneficiaries of the IHS.

Specifically, section 2901(b) states:

Health programs operated by the Indian Health Service, Indian tribes, tribal organizations, and Urban Indian organizations . . . shall be the payer of last resort for services provided by such Service, tribes, or organizations to individuals eligible for services through such programs, notwithstanding any Federal, State, or local law to the contrary (25 U.S.C. § 1623[b]).

Generally, under 38 U.S.C. § 1725, the VA is responsible for paying for emergency care services for veterans. This statute provides that, subject to certain exceptions, the Secretary of the Department of Veterans Affairs "...shall reimburse [an eligible] Veteran [or, as deemed appropriate by the Secretary, the Veteran's provider or insurer] for the reasonable value of emergency treatment furnished the Veteran in a non-Department facility" (38 U.S.C. § 1725(a)). In the past, the VA did not make reimbursements under this provision if the eligible veteran was entitled to "care or services under a health-plan contract" (38 U.S.C. § 1725(b)(3)(B)). The IHS and Tribal programs were characterized by the VA as a "health-plan contract."

Section 2901(b) of the Affordable Care Act now requires the VA to pay for emergency services under 38 U.S.C. § 1725 before the IHS or Tribal health programs become responsible. Therefore, when an AI/AN veteran seeks emergency care at a non-IHS or Tribal provider, the provider is legally required to seek reimbursement from all alternate resources before pursuing payment from the IHS or the Tribe through the Contract Health Services program. Section 2901(b) establishes that other coverage, including VA resources, must be exhausted before an Indian health provider incurs any payment or coverage responsibility. The Affordable Care Act requires the VA to cover health care costs for an AI/AN veteran eligible for IHS services to the same extent that the VA is required to assume coverage for all other eligible veterans.

Page 2 – Tribal Leader

We believe that this clarification in coordination of payments for emergency care achieves parity in CHS coverage for AI/AN veterans and will allow IHS and Tribal programs to extend CHS resources to cover additional care.

Sincerely,

/Yvette Roubideaux/

Yvette Roubideaux, M.D., M.P.H.  
Acting Director