



NOV 04 2021

Dear Urban Indian Organization Leader:

On behalf of the Indian Health Service (IHS), I am writing to respond to comments shared during the July 26, 2021, virtual Urban Confer session with Urban Indian Organization Leaders.

On July 16, 2021, the IHS initiated Urban Confer to seek input on the possibility of calculating an All-Inclusive Rate (AIR) for Urban Indian Organizations (UIOs). Following the July 26, 2021, Urban Confer session, comments were due on July 30, 2021. In addition to verbal comments during the session, the IHS received six written comments through the Urban Confer e-mail box.

SUMMARY OF COMMENTS

In summary, commenters offered the following:

- Recommended that the IHS expeditiously apply the current AIR to UIOs due to congressional intent regarding 100 percent Federal Medical Assistance Percentage (FMAP) and the current public health emergency. Commenters stated that application of the current AIR to UIOs would provide an immediate source of additional funding to respond to the public health emergency.
- Recommended that the IHS apply the current AIR to UIOs administratively and that the Centers for Medicare & Medicaid Services (CMS) interpret UIOs operating under an Indian Health Care Improvement Act agreement to be functioning as IHS facilities in performing obligations set forth under that agreement. Commenters cited a 1996 Memorandum of Agreement (MOA) with CMS in support of this recommendation.
- Recommended that the IHS include specific language detailing the application of the AIR to UIOs in the upcoming *Federal Register* Notice announcing Calendar Year 2022 rates. Commenters stated IHS support of the application of the current AIR to UIOs will assist UIOs, state Medicaid agencies, and CMS when considering changes to provider payment rates available to UIOs.
- Recommended that the IHS not engage in a 6-12 month-long process to calculate a separate Urban Indian Organization rate, due to the public health emergency and congressional intent to extend 100 percent FMAP to UIOs.
- Recommended that the IHS not support any adjustment to the current IHS AIR that would be detrimental to Tribes, Tribal Health Programs, or the Indian health care system in any way.

IHS RESPONSE TO COMMENTS

Under the American Rescue Plan Act of 2021 (ARP), states can temporarily receive 100 percent Federal match in their expenditures for Medicaid services received through certain UIOs. The relevant statutory language is silent about the Medicaid payment rates states may opt to pay to UIOs. States have the discretion to set and adjust Medicaid provider payment rates, as long as the state payment rates meet certain requirements under the Social Security Act, particularly under section 1902(a)(30)(A) of the Social Security Act. In an August 30, 2021, State Health Official letter, CMS offered to provide technical assistance to states that believe adjusting their reimbursement rates for UIOs is appropriate.

Separately, the Department of Health and Human Services (HHS) has authority to calculate IHS All-Inclusive Rates, which are reviewed and approved by the Office of Management and Budget prior to being published in the *Federal Register*. These rates are used by the IHS when seeking reimbursement for services, including services covered by Medicare and Medicaid. The Department of Health and Human Services, including the IHS, does not have the authority to require that states adopt specific Medicaid provider payment rates for UIOs, such as the IHS All-Inclusive Rate. Some states have chosen to adopt the IHS All-Inclusive Rate as their Medicaid payment rate for certain provider types.

The 1996 MOA between the Health Care Financing Administration (then HCFA, now CMS) and the IHS, which was referenced during the Urban Confer session, does not provide HHS with authority to require that state Medicaid programs adopt the IHS All-Inclusive Rate as a Medicaid provider payment rate for UIOs. The MOA explains that CMS would provide 100 percent Federal match for state expenditures on Medicaid services received through certain health care facilities owned and operated by Tribes and Tribal Organizations pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA). By its terms, the MOA does not include Urban Indian Organization facilities. The ARP has authorized a temporary 100 percent Federal match for state Medicaid expenditures on services received through certain UIOs. However, nothing in the ARP, IHS authorities, or the 1996 MOA supports a conclusion that states must adopt the IHS All-Inclusive Rate as the Medicaid provider payment rate for UIOs.

In light of the above, and in response to input received during Urban Confer, the IHS will continue to engage in discussions within HHS regarding the possible calculation of an Urban Indian Organization-specific All-Inclusive Rate. We will seek additional input from Urban Indian Organization Leaders on whether and how to calculate an AIR for UIOs. If you have questions, please contact Mr. Rick Mueller, Deputy Director, Office of Urban Indian Health Programs, IHS, by telephone at (301) 443-3787, or by e-mail at rick.mueller@ihs.gov.

Sincerely,

/Elizabeth A. Fowler/

Acting Director