



Enclosure: The IHS Interim Guidance for Contract Support Costs on Expenditures of Third-Party Reimbursements

On June 6, 2024, the U.S. Supreme Court held that the Indian Health Service (IHS) must pay eligible contract support costs (CSC) incurred by Tribes and Tribal organizations that expend program income, or third-party reimbursements, under their Indian Self-Determination and Education Assistance Act (ISDEAA) contracts and compacts.

We are asking for Tribes' patience as we enter consultation and work to implement this decision. However, this enclosure will serve as an initial guidance document to illustrate the interim methodology we will immediately employ to process claims for CSC related to expenditures of third-party reimbursements, if necessary.

1. Process

Post-Award Claims for CSC on Expenditures of Third-Party Reimbursements for Years Prior to Fiscal Year and Calendar Year 2024

The IHS will follow the established requirements and procedures of the ISDEAA and implementing regulations in reviewing Contract Disputes Act (CDA) claims from individual Tribal health programs (THP) seeking additional CSC under awarded contracts. *See* 25 C.F.R. § 900.215 and 42 C.F.R. § 137.412. Claims that are not submitted in writing to the awarding official within 6 years of accrual are barred by the statute of limitations and will be denied in the ordinary course. *See* 41 U.S.C. § 7103(a)(4)(A). Therefore, for example, claims attributable to contracts with a performance period ending in fiscal year (FY) or calendar year (CY) 2017 or earlier are now barred and will be denied. Claims within the statute of limitations that exceed \$100,000 annually must be accompanied by a certification of accuracy and good faith. If a certification is not provided, the IHS will issue a rejection of the defective claim(s). Both Title I and Title V THP must submit their claims to the appropriate awarding official. *See* 41 U.S.C. § 7103; 25 C.F.R. § 900.219. Only claims properly presented to the appropriate IHS awarding official will be considered. Valid claims should be submitted to the central email account IHSCDAclaims@ihs.gov with a copy to the Awarding Official for your region and contract type, which is listed below.

In reviewing THP's claims, the IHS will refer to records in its possession, but the IHS also needs to rely on the THP for additional documentation that helps identify the full amount of eligible CSC incurred by the THP. Submission of such documentation with the claim letter to the Agency will help expedite the analysis and bring about a timelier resolution of the THP's claims for additional CSC funding.

The IHS regulations implementing the CDA require that the IHS either issue a decision on the claim within 60 days of the date of receipt or notify the contractor when it will issue its decision. 25 C.F.R. § 900.223(c). Given that the IHS does not have in its possession all of the documentation necessary to review this type of claim, and given the size, complexity, age, and lack of specificity of these claims, the IHS anticipates routinely extending its deadline to decide these claims. The IHS anticipates that it will issue an extension for new claims while it implements the interim methodology and works through the analysis of existing claims. The IHS appreciates THP willingness to continue to work in partnership with the Agency as we implement the Supreme Court’s ruling.

Negotiations for CSC on Expenditures of Third-Party Reimbursement

As shared in the Tribal Leader Letter, the IHS is planning to consult and seek input from all Tribes before updating the policy and developing a final methodology. We ask the THP to refrain from submitting new proposals or requests for negotiations at this time until that collaborative work is completed.

However, if you do submit a request for additional funding for CSC on expenditures of third-party reimbursements, please submit those requests to your established Agency Lead Negotiator or Awarding Official. If you have a Title I agreement, please include the following statement in any request: “This is not a proposal pursuant to 25 U.S.C. § 5321(a)(2).”

2. Reimbursement Based on Actual Expenditures

The CSC generated by qualifying expenditures of third-party reimbursements will be calculated based on documentation demonstrating the use of third-party reimbursements such as the THP’s audited financial statement that accounts for the claimed expenditures as well as the applicable Negotiated Indirect Cost Rate Agreement proposal and agreement executed by the THP and its cognizant agency.

3. Qualifying Expenditures – Funds at Issue

The CSC will be calculated based on qualifying expenditures of third-party reimbursements directly generated and then credited by the provision of health services under the contract, including income received and credited under 25 U.S.C. § 1621e; e.g., reimbursements from private insurers, Medicare, Medicaid, the VA, and third-party tortfeasors. Program income generated by the provision of health services must be credited under 25 U.S.C. § 1621f and have been spent in accordance with 25 U.S.C. § 1641.

The Court’s decision does not relate to or require the IHS to pay CSC generated by the expenditure of other categories of non-Secretarial amount funds (i.e., funds not paid by the IHS under 25 U.S.C. § 5325(a)(1)), such as grants and cooperative agreements or contributions of funds from a THP’s general fund.

4. Qualifying Expenditures – Services Under Contract

The IHS will only pay CSC generated by qualifying expenditures of third-party reimbursements. Costs generated by the qualifying expenditures must be properly allocated between programs benefiting from the expenditures. The health care programs that may be included in an ISDEAA contract are enumerated by statute, and the IHS will not pay CSC for health care activities that are not included in an ISDEAA contract.

5. Qualifying Expenditures – Services to Beneficiaries

The IHS CSC appropriation is not legally available to pay costs associated with services to non-beneficiaries. The THP are legally required to recoup the full cost of services to non-beneficiaries, and services to non-beneficiaries may not result in the diminution of services to IHS beneficiaries. Accordingly, the IHS will only pay CSC generated by qualifying expenditures for services to IHS beneficiaries. The IHS will review any data it may have regarding IHS beneficiary and non-beneficiary populations served by the facility as part of its CSC calculation, but the THP will be provided the opportunity to present its own data regarding facility usage.

6. Reimbursement of Direct and Indirect Costs from Third-Party Payors

Reimbursements made by third-party payors may include compensation for costs that could otherwise be claimed as CSC. The IHS will not make a duplicate payment for these costs. If a THP's reasonable and allowable cost of providing the reimbursed services exceeds the amount reimbursed by a third-party payor, the IHS will consider only the difference for purposes of calculating the CSC due under the IHS contract.

7. Other CSC Eligibility Requirements

All other statutory requirements for CSC eligibility apply to CSC generated by qualifying expenditures of third-party reimbursements. Tribes may be paid for CSC expenses that satisfy both § 5325(a)(2) and § 5325(a)(3)(A). In other words, CSC may only be awarded for reasonable, allowable, and necessary costs that the Tribe incurred to ensure compliance with the terms of the contract and prudent management for activities not normally carried on by the Secretary or which are provided for by the Secretary in support of the contracted program from resources other than those under contract.

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