

AGREEMENT  
BETWEEN  
DEPARTMENT OF VETERANS AFFAIRS  
VETERANS HEALTH ADMINISTRATION  
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) for certain health care services, specifically Direct Care Services (as defined herein) provided by the IHS 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.
- C. This Agreement will be subject to phased implementation that will begin at the sites identified by VA and IHS as Phase I sites in the attached site list. Reimbursements for Direct Care Services described in this Agreement initially will be authorized at only the sites identified as the Phase I sites in the attached implementation plan. VA and IHS will begin to phase in additional sites within 6 months of the initiation of Phase I.
- D. The parties to this agreement agree to address reimbursement for other reimbursable services not covered by this Agreement at a later date.

**II. AUTHORITY**

25 U.S.C. § 1645 and 38 U.S.C. § 8153.

**III. SCOPE**

This Agreement governs reimbursement for Direct Care Services provided to Eligible AI/AN Veterans by IHS operated health care facilities and programs.

**IV. DEFINITIONS**

**Direct Care Services:** The term “Direct Care Services” means any health service that is provided directly by IHS. This term does not include contract health services.

**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 and 38 C.F.R.17.36 or is eligible for hospital care and medical services under 38 U.S.C. § 1705(c)(2) and 38 C.F.R.17.37(a)-(c) notwithstanding the Eligible AI/AN Veteran's failure to enroll in VA's system of patient enrollment.

VA and IHS 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 through which services are provided, directly or by contract, to Eligible AI/AN Veterans within a defined geographic area.

## **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 (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 and IHS agree to continue to work cooperatively to improve the quality of care that is provided to AI/AN Veterans. IHS 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 and Research 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 facility. In support of administrative efficiencies, VA 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 facilities 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 or IHS level.

## **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 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 413.70, 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). For a period of two years from the date this agreement is executed, VA's payment will be reduced by \$15 per claim to account for the administrative expense VA will incur to manually process the claim. After the two year period, VA processes will be automated, which will obviate the need to deduct the administrative fee. VA is committed to automating sooner if possible. VA's payment will be reduced by \$15 per claim for facilities that submit paper claims to account for the administrative expense that VA will continue to incur to process these claims.
  - D. **Ambulatory Surgical Services.** VA shall reimburse for services to Eligible AI/AN Veterans at established Medicare rates for freestanding Ambulatory Surgery Centers.
  - E. **Outpatient Pharmacy Services/Take-Home Drugs.** For outpatient medications, IHS 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 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 30-day supply.
  - F. **Rate Review.** VA and IHS will conduct reviews of the rates of services provided under this agreement to ensure that the costs VA is incurring pursuant to the terms of the agreement are within an acceptable range. The first review will be completed no later than 1 June 2015.

## **VIII. CLAIM SUBMISSION AND PAYMENT**

- A. IHS and VA agree to automate all processes for claim submission and processing within two years of the execution of this agreement. Claims for reimbursement should be submitted to VA electronically unless not feasible. All claims submitted for reimbursement must be billed in accordance with Medicare's National Correct Coding Initiative (NCCI). 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. If an IHS facility is unable to file electronically, VA will work with that facility to submit claims until they can establish electronic processes.

- 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. In accordance with 25 U.S.C. § 1621f, all reimbursements received under this Agreement shall be credited to the IHS Service Unit by or through which such services were provided and shall be used as provided in 25 U.S.C. § 1641.
- D. IHS shall, 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.
- E. IHS will bill all third party payers, as permissible by law, prior to billing VA. VA is responsible only for the balance remaining after other third party reimbursements.
- F. Payment to IHS 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 identifies Veterans who do not wish to enroll in VA's system of patient enrollment, VA and IHS will establish a process to determine eligibility.
- G. 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.

## **IX. 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 V, 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, or
  6. The care or services are not otherwise reimbursable under this agreement.
- 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.

## **X. 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 or IHS facilities.
- C. VA and IHS will comply with all applicable Federal laws and regulations regarding the confidentiality of health information. Medical, health and billing records of IHS 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. 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. Medical records created or maintained by IHS programs in the performance of providing direct care services are not subject to VA confidentiality statutes. Records created or maintained by VA in the performance of reimbursing direct care services are not subject to IHS statutes.

- D. VA and IHS 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 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 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 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. VA copayments do not apply to direct care services provided by IHS to Eligible AI/AN Veterans under this agreement.
- J. All medical malpractice claims arising under the Federal Tort Claims Act (FTCA) for incidents occurring at IHS facilities under this agreement shall be the responsibility of the IHS 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, VA will promptly notify 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 or IHS 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).

**XI. 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, and tribal leadership.

**XII. PERIOD OF AGREEMENT**

This Agreement becomes effective upon the latest signatory date below for a period of three years with options up to five years. Either Party may cancel this Agreement upon 60 days written notice.

ACCEPTED:

DEPARTMENT OF VETERANS AFFAIRS  
VETERANS HEALTH ADMINISTRATION

By: /Robert A. Petzel, MD/  
Robert A. Petzel, MD   
Under Secretary for Health

Date: 12/5/12

ACCEPTED:

DEPARTMENT OF HEALTH AND  
HUMAN SERVICES  
INDIAN HEALTH SERVICE

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

Date: 12/5/2012