

REVISED AGREEMENT BETWEEN
DEPARTMENT OF VETERANS AFFAIRS
ADD LOCAL FACILITY
AND

REIMBURSEMENT AGREEMENT FOR HEALTHCARE

I. PURPOSE

A. This revised Reimbursement Agreement (Agreement) is intended to facilitate resource sharing by reimbursement by the Department of Veterans Affairs (VA) to Tribal Health Programs (THP) for health care and related services provided by THPs to eligible American Indian/Alaska Native (AI/AN) Veterans as defined herein.

B. This Agreement establishes the basic underlying terms for reimbursement from VA to the THP.

C. This Agreement replaces the prior agreement between the parties regarding reimbursement for direct health care services, originally executed on December 5, 2012 and amendments.

II. PARTIES

A. Department of Veterans Affairs, [NAME VA Healthcare System, FILL IN ADDRESS](#)

B. [NAME Tribal Health Program FILL IN ADDRESS](#). (Include List of All Included Facilities, if applicable)

III. AUTHORITY

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

IV. DEFINITIONS

A. “**All Inclusive Rate (AIR)**” means the all-inclusive rate (AIR) 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 titles Outpatient Per Visit Rate (Excluding Medicare) and "Inpatient Hospital Per Diem Rate (Excludes Physician/Practitioner Services)

B. Direct Care Services means any health service that is provided directly by the Tribal Health Program (THP), including services delivered through telehealth. “Direct care services” does not include care or services provided by the THP through the THP Purchased/Referred Care program for care provided outside of the facility. This term does not include travel expenses incurred by eligible veterans.

C. Contracted Travel means travel contracted for by the THP under 25 U.S.C. 16211(b) which is provided as part of Purchase Referred Care that is reimbursable under this agreement. This term does not include travel expenses incurred by eligible veterans.

D. Eligible American Indian/Alaska Native (AI/AN) Veteran means an AI/AN Veteran who is (1) eligible for services from the THP 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, 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, or is otherwise eligible for services provided or paid for by VA. VA and the THP are responsible for determining eligibility for health care services within their respective programs. THP shall only bill VA eligible AI/AN Veterans

E. Purchased/Referred Care (PRC) formerly known as “contract health service,” shall have the same meaning as defined in 25 U.S.C. 1603(5).

F. Provider Guide means the National Program office Reimbursement Agreement Program guide, published on the VA program website, which includes the most current processes and procedures in effect to manage, maintain, and utilize the Agreement between partnering Tribal Health Programs and the VA

G. Telehealth: means clinical interactions between the patient and the physician or practitioner at a distant site using synchronous telehealth (i.e., video and audio communications). VA will reimburse in accordance with CMS reimbursement guidelines for telehealth and does not include other types of telemedicine.

H. Tribal Health Program (THP) has the meaning given that term in 25 U.S.C. § 1603(25)

V. REIMBURSABLE SERVICES (SCOPE)

A. Direct Care: VA shall reimburse the THP for direct care services provided to Eligible AI/AN Veterans, at the rates set forth in Section VII, when: (1) the THP provided the direct care services by or through THP operated facilities/programs; and (2) at the time of care, the VA had the authority to provide or pay for the care.

B. PRC: VA shall reimburse the THP in full for care or services provided to Eligible AI/AN Veterans through THP-operated PRC programs when: (1) the THP paid the PRC claim on or after January 5, 2021; and (2) at the time of care, services, or payment, the VA had the authority to provide or pay for the care.

1. For PRC claims paid between March 1, 2020 and January 5, 2021 for services provided during the coronavirus (COVID-19) emergency period, VA shall reimburse the THP in accordance with section VII for both of the following: (1) items and services as described in section 6006(b) of division F of the Families First Coronavirus Response Act (or the administration of such products) for eligible AI/AN Veterans; and (2) hospital care and medical services for covered Veterans for the treatment of the virus SARS-CoV-2 or COVID-19. The term "COVID-19 emergency period" means the emergency period described in section 1135(g)(1)(B) of the Social Security Act (42 U.S.C.1320b 5(g)(1)(B)). Reimbursable services do not include travel. (3) VA receives the invoice from THP within 180 days of this Agreement signature date

C. Contract Travel: VA shall reimburse the THP for services provided by the THP to Eligible AI/AN Veterans through a contract for travel described in 25 U.S.C. § 16211(b) when: (1) the THP payment occurred on or after January 5, 2021; and (2) at the time of the transportation or payment, the VA had the authority to provide or pay for such services.

D. Outpatient Pharmacy Services. VA shall reimburse the THP only for pharmaceutical drugs listed on the formulary used by VA in accordance with National VHA policy and applicable Veterans Integrated Service Network (VISN) and local VA Medical Center (VAMC) policy for medication orders. The Pharmacy Benefits Management Services (<http://www.pbm.va.gov/nationalformulary.asp>) webpage contains the VA National Formulary.

1. Requests for reimbursement of pharmaceutical drugs not listed on the VA formulary shall be submitted by the THP for approval by the local VAMC Pharmacy in advance of the request for reimbursement to the VA. If the THP received approval for reimbursement for a VA Non-Formulary pharmaceutical, the IHS must attach the approval documentation with the submitted pharmacy claims

E. Preauthorization. Preauthorization by VA is not required for Eligible AI/AN Veterans receiving direct care or THP pre-authorized Purchased Referred Care (PRC). Preauthorization is required for medications not on VA's formulary.

VI. REIMBURSEMENT RATES FOR DIRECT CARE SERVICES

A. Except to the extent inconsistent with the rate methodology explained herein, VA shall reimburse the THP for direct care services at rates based on Medicare payment methodologies. In the absence of Medicare rates, VA will pay the lesser of the local VA fee schedule amount or billed charges. If there is no Medicare rate, and no local VA Fee schedule amount, VA will pay billed charges

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 provided to Eligible AI/AN Veterans. The reimbursement 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 THP 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, reimbursement 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 with distinct units excluded from the prospective payment system by Medicare and hospitals that do not participate in Medicare will be paid at the national cost-to-charge ratio times the billed charges that are reasonable, usual, customary, and not in excess of rates or fees the hospital charges the general public for similar services in the community.
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 physician fee schedule.

C. Outpatient Hospital Services and Freestanding Clinic Services. Unless identified in C1, VA shall reimburse the THP for Eligible AI/AN Veterans at the all-inclusive rate (AIR) approved each year by the Director of THP. This rate is published annually in the Federal Register under the title: Outpatient Per Visit Rate (Excluding Medicare). Regardless of the number of times a patient is seen in a given day at a particular THP provider [facility], the outpatient services should be billed only once (i.e., all-inclusive). An exception is when a patient is seen for a clinic visit, then returns to the emergency room later the same day, at the same provider, for an unrelated condition (or vice versa).

When multiple facilities coordinate care for a single episode of care, only the Facility with the patient encounter can claim the reimbursement of a single AIR payment from the VA. The facility that performs the professional component of the test is considered the primary provider.

1. When not billed with a clinic visit, the following are excluded from the AIR reimbursement and will be reimbursed as described in VI A.
 - (a) Vaccination/immunizations
 - (b) Home Health
 - (c) Laboratory Services
 - (d) Medical Equipment /Prosthetics

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

- F. **Observation or Emergency Department (ED) Boarding** - One payment of the outpatient AIR will be paid for the episode of care, regardless of the number of uninterrupted days the episode covers
- G. **Outpatient Pharmacy Services.** To the extent pharmaceuticals are reimbursable under this Agreement, VA shall reimburse the THP as follows: VA shall pay at the lesser of billed charges or Wholesale Acquisition Cost (WAC), updated monthly, plus a \$2 dispensing fee per outpatient pharmaceutical. Dispensing fee will increase to \$3 effective 1/1/2028. If there is not WAC rate, VA will reimburse based on the lowest price government cost report or billed charges, whichever is lower. VA's current vendor for WAC is MediSpan but is subject to change.
- a. VA will not separately reimburse THP for pharmaceuticals and biologicals that are already reimbursed through VA's payment of the THP's all-inclusive rate (AIR).

VII. REIMBURSEMENT RATES FOR PURCHASED/REFERRED CARE (PRC) AND CONTRACTED TRAVEL

PRC and services provided through a contract for travel described in 25 U.S.C. § 16211(b) shall be reimbursed at the actual cost paid to the PRC provider/supplier or travel contractor. The THP is considered the payor of last resort, and as such, the use of alternate resources, (defined in 42CFR136.61) is required when such resources are available. This agreement does not exempt or replace THP from being payer of last resort. THP shall seek OHI payment before payment and provide VA copies of Other Health Insurance (OHI) Explanation of Benefits (EOB) to VA for reimbursement requests.

VIII. CLAIM SUBMISSION AND PAYMENT

A. Basic requirements

1. **Direct Care - Basic Requirements.** Claims for Direct care reimbursement should be submitted to VA electronically unless not feasible. All direct care claims submitted for reimbursement must be billed in accordance with Medicare's National Correct Coding Initiative (NCCI) and must include DRG codes. EDI transaction types accepted are 837I, 837P, 837D. 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, or CMS 1500. Claims submitted electronically shall comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) standards for electronic transactions. Claims submissions must comply with the requirements outlined in the ITU Provider guide
2. **PRC – Basic Requirements.** Invoices shall be submitted with a cover letter with tribe information and individual information for each claim to include Veteran and

provider information, services rendered, and an EOB (or other VA approved documentation) indicating reimbursement amount. Claims for reimbursement of PRC shall be submitted through established government to government processes, currently [E-Invoice system](#). Claims submissions must comply with the requirements outlined in the ITU Provider guide.

B. Timely Filing –Invoices for care provided after the effective date of this Agreement, not submitted to VA within 12 months from the date of service or 180 days from date of remittance from primary payer, shall not be reimbursed by VA

C. Other Reimbursements. THP shall seek payment from all other liable payers (Direct care and PRC), as permissible by law, before seeking reimbursement from VA for services provided to an Eligible AI/AN Veteran under this agreement. THP shall provide VA copies of Other Health Insurance (OHI) and THP Explanation of Benefits (EOB) Explanation of Payment (EOP). VA is responsible for only the balance remaining, up to the agreed upon rates, after other third-party insurance reimbursements

D. No prior VA approval is required for any of the reimbursable services, except for medications not on VA formulary.

IX. DENIAL, RECONSIDERATION AND APPEAL

A. VA may deny an invoice/claim or a portion thereof for services provided to an AI/AN Veteran when:

1. The AI/AN Veteran is ineligible for VA services, or
2. The VA lacks the authority to provide or pay for the care or related services, or
3. The information needed to adjudicate the invoice/claim is not provided, but only if VA has provided both notice to the THP of the missing information and a reasonable opportunity to provide such information to VA.

B. If VA denies reimbursement for a claim listed above, VA shall notify the THP 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. 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. Ultimate decisions relating to NODs shall be reached in accordance with section XI of this agreement

D. Nothing in this Agreement prohibits THP from seeking reimbursement from any other payer, including the Veteran for direct care services provided to a Veteran for which VA is not Eligible Services or for which VA denies payment for any other reason.

X. DISPUTES

A. The Parties shall utilize all reasonable efforts to resolve any dispute at the lowest administrative level possible with VA Payment Operations. In the event that either Party determines that further efforts are not conducive to resolving a dispute, the dispute shall be presented to the VA Contracting Officer for consideration; the VA Contracting Officer shall furnish a written reply on the dispute or claim to THP within 90 days. THP shall comply with any decision of the VA Contracting Officer pending final resolution of the matter.

B. In the event the Parties cannot amicably resolve the matter upon the decision of the VA Contracting Officer, a dispute or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by mediation. The neutral mediator shall be assigned from the Administrative Judges of the U.S. Civilian Board of Contract Appeals, with each Party bearing an equal share of any cost. The U.S. Civilian Board of Contract Appeals may furnish a neutral mediator at no cost.

C. Any claim by the either Party against the other must be presented no later than 1 year after the effective date of cancellation or final expiration of this Agreement otherwise the party forfeits its right(s) to relief.

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 THP beneficiaries to health care provided through their respective agencies; the quantity or range of quality of health care services provided to VA or THP beneficiaries by the respective health care programs; or the eligibility of VA or THP 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 THP facilities.

C. VA's obligations under this Agreement shall be subject to the availability of appropriated funds.

D. VA and the THP will comply with all applicable Federal laws and regulations regarding the confidentiality of health information. Medical, health and billing records of THP 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 Confidentiality of [Substance Use Disorder Patient] Records, 42 U.S.C. 290dd-2, 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 THP 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 THP for health care and related services are not subject to THP statutes.

E. VA and the THP agree to abide by all physical and cyber security requirements as detailed in the Memorandum of Agreement between the Veterans Health Administration (VHA) and the THP 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.

F. Exchange of Medical Records. THP shall 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 means. Copies of medical records exchanged under the Agreement shall belong to the recipient party, which will bear responsibility for information security and breach response with regard to those records.

G. 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 the THP 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.

H. VA copayments do not apply to the health care and related services provided by or through the THP to Eligible AI/AN Veterans under this Agreement.

I. All medical malpractice claims arising under the Federal Tort Claims Act (FTCA) for incidents occurring at THP facilities or PRC provider under this Agreement shall be the responsibility of the THP in accordance with applicable law and regulation and are not the responsibility of VA. If VA receives a medical malpractice claim directly from an AI/AN Veteran that primarily involves medical care rendered by the THP or their PRC provider, VA will promptly notify HHS for care provided by the Tribal Health Program 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 THP, 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. EFFECTIVE DATE, TRANSITION, TERMINATION, AND AMENDMENT.

- A. **Effective Date.** This Agreement becomes effective on the date that the last signatory signs the agreement.
- B. **Transition.** VA continues to be responsible for any reimbursements due to the THP under the prior agreement consistent with the terms of that Agreement.
- C. **Amendment.** Except for Cancellation, this Agreement may be revised or amended only by mutual written agreement signed by the signatories (or their authorized representatives) to this Agreement.
- D. **Cancellation.** Either party may cancel this Agreement at any time by providing a 60-day written notice of the intent to cancel the Agreement to the signatories (or their authorized representatives) to this Agreement.
- E. **Funding.** VA's obligations under this Agreement shall be subject to the availability of appropriated funds.