

**Agreement  
Between  
Department of Veterans Affairs  
[Insert VA Healthcare System Name]  
And  
[Insert Tribal Health Provider Name]  
REIMBURSEMENT FOR HEALTH CARE & RELATED SERVICES**

**I. PURPOSE**

- A.** This Reimbursement Agreement (Agreement) is intended to facilitate reimbursement by the Department of Veterans Affairs (VA) to Tribal Health Programs (THP) for health care and related services provided by the THP to Eligible American Indian/Alaska Native 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.

**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 the Indian Health Services (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)”.
- B. Contracted Travel:** means services provided by the THP to Eligible American Indian/Alaska Native Veterans through a contract for travel described in 25 U.S.C. § 16211(b).
- C. Direct Care Services:** means any health service that is provided directly by the THP, including services delivered through telemedicine. “Direct Care Services” does not include

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care or services provided by the THP through the THP Purchased/Referred Care (PRC) program for care provided outside of the THP facility.

**D. Eligible American Indian/Alaska Native Veteran:** means an American Indian/Alaska Native Veteran who is: (1) eligible for services from the THP in accordance with 42 C.F.R. Part 136 and is enrolled in VA's system of patient enrollment in accordance with 38 U.S.C. § 1705 and 38 C.F.R.17.36; (2) 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 American Indian/Alaska Native Veteran's failure to enroll in VA's system of patient enrollment; or (3) 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.

**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. Telemedicine:** means the exchange of medical information from one site to another through electronic communication to improve a patient's health. Examples of telemedicine include health care services delivered through videoconferencing, store-and-forward imaging, on-line patient portals, and/or audio communications.

**G. Tribal Health Program (THP):** has the same meaning as defined in 25 U.S.C. § 1603(25).

## V. 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 American Indian/Alaska Native Veterans to choose whether they receive health care services at VA or THP facilities.
- C.** 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; Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, 45 C.F.R. Parts 160 and 164; Confidentiality of Medical Quality Assurance Records, 25 U.S.C. § 1675; the Patient Safety and Quality

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Improvement Act of 2005 and Federal regulations promulgated to implement those acts. Records of VA payment for services within the scope of this Agreement 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 HIPAA Privacy Rule, 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. Medical records created or maintained by THP programs in the performance of providing Direct Care Services are not subject to VA confidentiality statutes.

- D.** 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. To the extent permitted by law and when consistent with records retention schedules, said books, documents, papers, and records shall be made available until the expiration of five years after submission of any claim paid pursuant to this Agreement.
- E. Exchange of Medical Records.** To the extent permitted by law, the THP shall provide VA with 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, to the extent permitted by law. 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.
- F.** If VA and the THP are unable to agree about a material aspect of this Agreement or the resolution of invoice/claim denials, 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.
- G.** To the extent an Eligible American Indian/Alaska Native Veteran is eligible for VA hospital care and medical services but not enrolled, the THP shall take steps to collaborate with VA to assist the Eligible American Indian/Alaska Native Veteran in enrolling in VA's system of patient enrollment.
- H.** All medical malpractice claims arising under the Federal Tort Claims Act ("FTCA") for incidents occurring 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 American Indian/Alaska Native Veteran that primarily involves medical care rendered by the THP or their PRC provider, VA will promptly notify the THP by forwarding the claim to the THP. Where VA is identified as an involved party in a claim submitted to THP, the THP Claims Officer will provide a copy of the claim and documents effecting resolution or disposition of the claim to the VA Office of the General Counsel (021B), 810 Vermont Avenue, NW, Washington DC 20420.

## VI. REIMBURSABLE SERVICES (SCOPE)

**A. Direct Care Services:** VA shall reimburse the THP for direct care services provided to Eligible American Indian/Alaska Native 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, VA had the authority to provide or pay for the care through any means. This Agreement does not cover care provided by VA providers, or care referred to the THP under a different agreement with VA.

**B. Outpatient Pharmacy Services:** VA shall reimburse the THP for outpatient medications on the THP formulary when associated with the provision of Direct Care Services provided to an Eligible American Indian/Alaska Native Veteran. VA will not reimburse for the following: (1) compounded medications; (2) medications that are not approved by the Food and Drug Administration (FDA); (3) medications that are considered experimental.

### C. PRC:

1. VA shall reimburse the THP in accordance with Section VIII for care or services provided to Eligible American Indian/Alaska Native 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/services through any means.
2. For PRC care or services delivered between March 1, 2020 and January 5, 2021, and paid by the THP, VA shall reimburse the THP in accordance with Section VIII for 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 reimbursable services do not include travel. With respect to these PRC claims for care or services provided between March 1, 2020 and January 5, 2021, the THP will submit invoices to VA within 365 days of this Agreement's effective date.

**D. Contracted Travel:** VA shall reimburse the THP in accordance with Section IX for Contracted Travel when: (1) the transportation occurred on or after January 5, 2021; and (2) at the time of the transportation or payment, VA had the authority to provide or pay for such services through any means.

## VII. 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 and otherwise agreed upon rates specified herein, VA will pay the lesser of the local VA Fee Schedule amount or billed charges.

**B. Inpatient Hospital Services:** The reimbursement methodology under this section applies to all inpatient services furnished by the THP 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 a THP facility.

1. Payment for inpatient hospital services will be based upon the applicable prospective payment system (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. This methodology will be used under this Agreement to reimburse inpatient hospital services regardless of whether the THP hospital participates in the Medicare program or is otherwise exempt from the PPS (e.g., Critical Access Hospitals (CAHs)).
2. For hospitals that furnish inpatient services but are exempt from PPS and receive reimbursement based on reasonable costs, 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 reimbursed based on the Medicare physician fee schedule.

**C. Outpatient Hospital Services and Freestanding Clinic Services:** VA shall reimburse outpatient hospital and free-standing clinics for services provided to Eligible American Indian/Alaska Native Veterans at the AIR.

**D. Ambulatory Surgical Service Centers:** VA shall reimburse the THP at established Medicare rates for services provided to Eligible American Indian/Alaska Native Veterans at freestanding Ambulatory Surgical Service Centers.

**E. Home Health:** VA shall reimburse the THP at the AIR for Direct Care Home Health Services provided to Eligible American Indian/Alaska Native Veterans.

**F. Durable Medical Equipment, Prosthetics/Orthotics & Supplies (DMEPOS):** VA shall reimburse the THP at reasonable billed charges for DMEPOS provided to Eligible American Indian/Alaska Native Veterans.

**G. Outpatient Pharmacy Services:** VA shall reimburse the THP for Outpatient Pharmacy Services at the lesser of reasonable billed charges or the Wholesale Acquisition Cost (WAC) plus a \$3.50 dispensing fee per pharmaceutical (not including supplies). VA Payment Operations will complete audits on the Outpatient Pharmacy and reserves the right to request the THP Formulary information from the THP.

## **VIII. REIMBURSEMENT RATES FOR PURCHASED/REFERRED CARE (PRC)**

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A. VA shall reimburse the THP for PRC at the actual cost paid by the THP to the PRC provider/supplier.

### IX. REIMBURSEMENT RATES FOR CONTRACTED TRAVEL

A. VA shall reimburse the THP for Contracted Travel at the actual cost paid by the THP to the travel contractor. VA will only reimburse for Contracted Travel under this Agreement.

### X. CLAIM SUBMISSION AND PAYMENT

A. **Generally:** The THP and VA agree to follow CMS industry standards for health care claims submission and adjudication.

B. **Direct Care Services:** Claims for direct care services reimbursement shall be submitted to VA electronically unless not feasible. 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 or recognized under section 1175 of such Act. 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. Claims submitted electronically shall comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) standards for electronic transactions.

C. **Required Program Identifier (All Claim Types):** All claims under this Agreement must be submitted using the following program identifier(s), unless otherwise indicated by VA: THP.

#### D. Outpatient Pharmacy Claims:

1. **Required Coding:** All pharmacy claims should be coded using the Healthcare Common Procedure Coding System (HCPCS) code J3490.
2. **Required Claim Information:**
  - (a) Program Identifiers
  - (b) Social Security Numbers (SSNs) (must be 9 digits with no dashes or other characters)
  - (c) Provider Tax IDs (must be 9 digits with no extra characters)
  - (d) HCPCS code J3490
  - (e) Date of fill
  - (f) Number of day's supply
  - (g) Quantity of drug
  - (h) Pharmacy name
  - (i) Doctor and address
  - (j) Drug name (generic name) and strength
  - (k) Amount paid by the other health plan or retail price for the pharmacy
  - (l) National Drug Code (NDC) and Description

(m)NDC Unit/basis of measurements.

#### **E. PRC and Contracted Travel:**

1. Claims shall be submitted electronically through VA established processes, and VA cannot accept invoices through the standard health care claims submission process using EDI or paper claims CMS1500 (HCFA) or CMS1450 (UB). Invoices for reimbursement of PRC and Contracted Travel services must be submitted to VA Western Region Payment Operations via the THP secure messaging systems.
2. **Contracted Travel:** Upon submission of claims for contracted travel, THP will provide additional documentation showing proof that services provided were paid under a contracted travel arrangement.
3. **Required Documentation:** Invoices shall be submitted with a cover letter in Microsoft Excel format including the information below (VA will provide a Cover Letter Template document):
  - (a) THP facility name, Tax Identifier Number (TIN), Billing Provider National Provider Identifier (NPI), and address
  - (b) Veteran information: Full name, full SSN or ICN (Client ID), and Date of Birth (DOB)
  - (c) Date of Service (From Date/To Date)
  - (d) Name of community provider Veteran was referred out to
  - (e) Pharmacy section (if applicable)
  - (f) THP payment amount
  - (g) If submitting a pharmacy invoice, the pharmacy tab within the Cover Letter must also be completed.
4. **Supporting Documentation:** The following documentation may be required to be submitted with the Cover Letter:
  - (a) Associated Explanation of Benefit (EOB) or Payment (EOP).
  - (b) If COVID-related PRC, COVID-19 diagnosis code must be shown in the submitted supporting documentation.
  - (c) For Contracted Travel, include a copy of the referral approving the contracted travel.

**F. Timely Filing Limitation:** Claims or invoices shall be submitted to VA within 36 months from the date of service, unless there is good cause for delay or unless specified otherwise in this Agreement.

#### **G. Liable Payers**

1. **Direct Care:** The THP shall seek payment from all other liable payers for Direct Care Services, to the extent feasible and as permissible by law, before seeking reimbursement from VA for Direct Care Services provided to an Eligible American Indian/Alaska Native Veteran under this Agreement. The THP shall provide VA with copies of Other Health Insurance (OHI), Explanation of Benefits (EOB), Explanation of Payment (EOP), or similar documentation when the THP receives payment from

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other liable payers, VA is responsible for only the balance remaining, up to the agreed-upon rates.

2. **PRC:** The THP is considered the payer of last resort for PRC, and as such, the use of alternate resources (defined in 42 CFR § 136.61) is required when such resources are available. This Agreement does not exempt or replace the THP from being payer of last resort.

### **H. Timely Payment:**

1. **Direct Care:** VA will process claims for payment submitted electronically within 30 days of receipt and within 45 days of receipt for claims submitted in paper form. An EOB that satisfies industry standards will be provided by VA to the THP.
2. **Purchased Referred Care and Contracted Travel:** VA will make reimbursement on invoices submitted within 45 days of receipt. An EOB that satisfies industry standards will be provided by VA to the THP.

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

**J.** No cost-sharing, co-payments, or other deductions may be subtracted from the reimbursements, charged to the Eligible American Indian/Alaska Native Veteran, or otherwise counted against any caps for the Eligible American Indian/Alaska Native Veteran.

## **XI. DENIAL, RECONSIDERATION AND APPEAL**

**A.** VA may only deny an invoice/claim or a portion thereof for services provided when:

1. The American Indian/Alaska Native Veteran is ineligible for VA services, or
2. 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, 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 THP may obtain a reconsideration of the denial by submitting a request for reconsideration or appeal in writing, within one year of the denial notice. The THP's written request for reconsideration or appeal shall set forth the grounds supporting the request for appeal and include any documentation requested by VA for reconsideration.



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C. VA shall review and respond to a request for reconsideration or appeal. If the original decision is affirmed on reconsideration, the THP 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 decision. Ultimate decisions relating to NODs shall be reached in accordance with Section XII of this Agreement.

### **XII. 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 and the VA Contracting Officer shall furnish a written reply on the dispute or claim to the THP within 60 days.

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 referred to a non-binding mediation before the initiation of any legal or adjudicative action or proceeding before any court or tribunal. To initiate mediation, either Party shall give written notice to the other of the intent to mediate an anticipated or alleged actual dispute.

C. Within a reasonable timeframe thereafter, but not to exceed 90 calendar days, the Parties, directly or through their designated representatives(s) agree to select a mutually agreeable mediator who can mediate the dispute on a date acceptable by both Parties. If agreed to, and without waiving sovereignty, a neutral mediator may 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.

D. The Parties agree that mediation shall be confidential in all respects. The Parties further agree that documents exchanged, statements prepared and provided, and settlement offers and counter offers made during mediation shall be inadmissible in any resolution action or proceedings.

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

### **XIII. EFFECTIVE DATE, TRANSITION, TERMINATION, AND AMENDMENT.**

A. **Effective Date.** This Agreement becomes effective on the date that the last signatory signs the Agreement.

