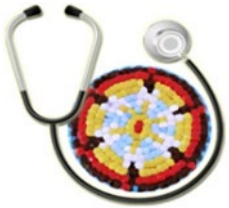
Health Care Reform in Indian Country

Self-Governance Communication & Education

Self-Governance Tribes Striving Towards Excellence in Health Care

ACA/IHCIA Hot Topics

Elliott Milhollin
Hobbs, Straus, Dean & Walker LLP



IHS Tribal Self-Governance Advisory Committee

Self-Governance Communication and Education

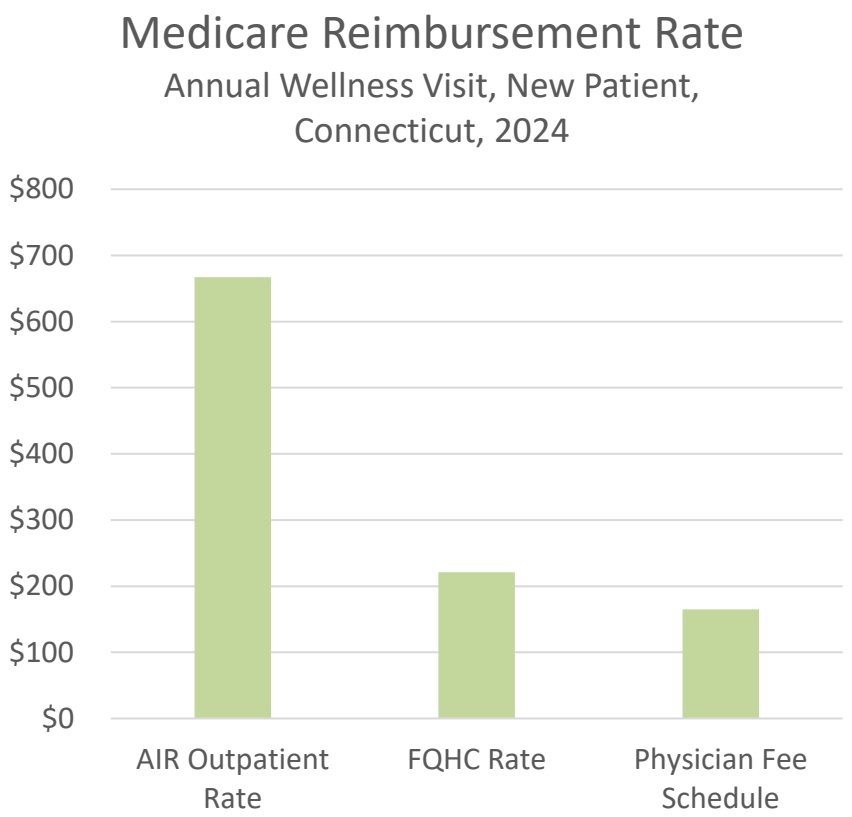
Key Terms

- All-Inclusive Rate (AIR)
- Federally-Qualified Health Center (FQHC)
- I/T/U: IHS, Tribal, and Urban Indian Organizations
- Qualified Health Plan
- Federally Qualified Health Plan
- Tribal Technical Advisory Group (TTAG)

Medicare Hot Topics

1. Allow all IHS and Tribal Clinics to Bill at the Medicare Outpatient All-Inclusive Rate

- Medicare reimburses IHS and Tribal clinics at very different rates depending on the clinic type.
  - **Reimbursed at the IHS Medicare AIR Outpatient Rate**: Provider-Based Clinics and Grandfathered Tribal FQHCs.
  - **Reimbursed at FQHC Rates**: Tribal FQHC Clinics.
  - **Reimbursed at Physician Fee Schedule**: Other Tribal Clinics.



1. Allow all IHS and Tribal Clinics to Bill at the Medicare Outpatient AIR

- Only a small subset of IHS and Tribal clinics qualify for the Medicare Outpatient AIR:

To qualify as a **Provider-Based Clinic**, a clinic must:	The following do not qualify as **Provider-Based Clinics**:
✓ Bill through a main hospital; and ✓ Fit one of the following criteria: ○ Owned and operated by the IHS ○ Leased from a Tribe by the IHS ○ Owned by the IHS and operated by a Tribe	× Clinics that a Tribe has taken over from an IHS hospital. × Clinics owned and operated by a Tribe.

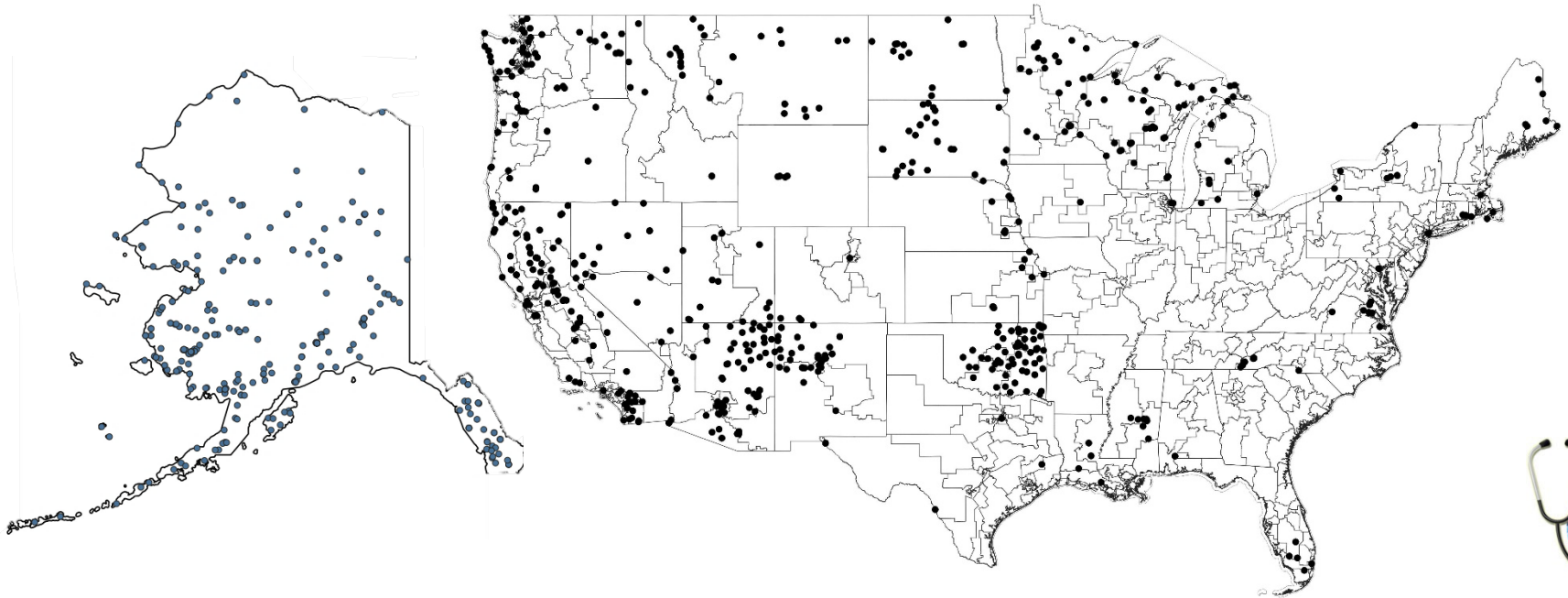
1. Allow all IHS and Tribal Clinics to Bill at the Medicare Outpatient AIR

- Only a small subset of IHS and Tribal clinics qualify for the higher Medicare Outpatient AIR:

To qualify as a **Grandfathered Tribal FQHC**, a clinic must:	The following do not qualify as **Grandfathered Tribal FQHCs**:
✓ Be an FQHC; ✓ Be operated by a Tribe or Tribal organization; and ✓ Show it was billing as if it were a provider-based clinic under an IHS hospital on or before April 7, 2000.	× IHS operated clinics. × New and freestanding tribal clinics.

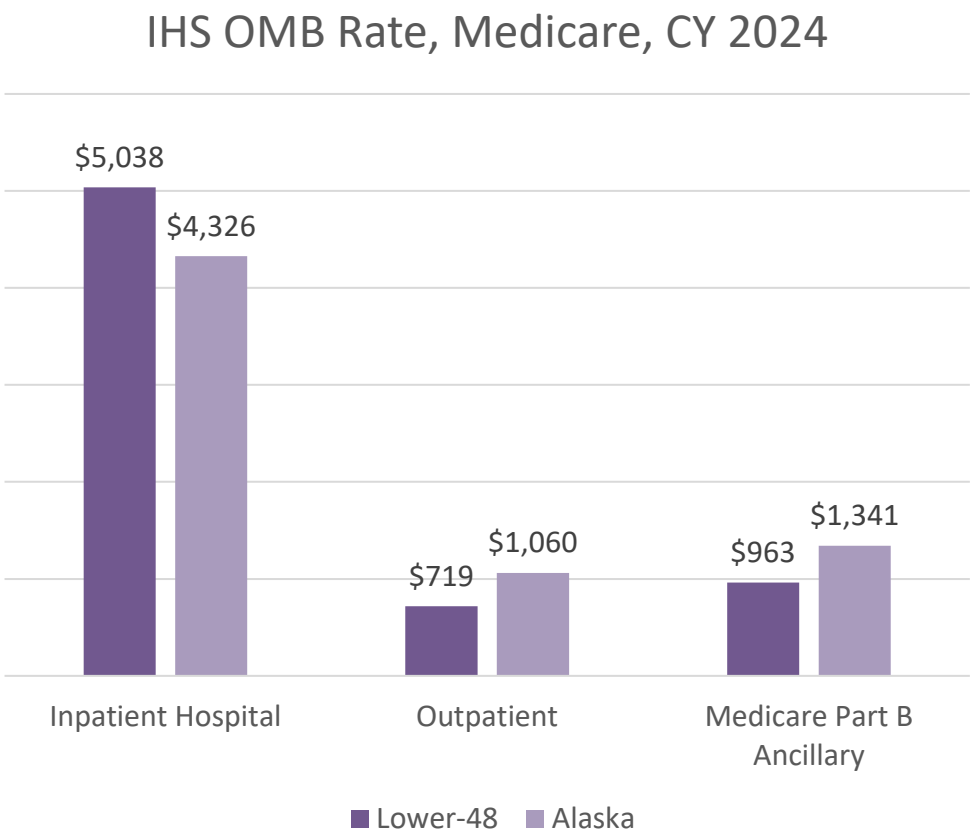
1. Allow all IHS and Tribal Clinics to Bill at the Medicare Outpatient AIR

- All other IHS and Tribal clinics are reimbursed at the FQHC or Physician Fee rate, which are generally lower than the AIR.
- In its CY 2025 Outpatient Prospective Payment Rule, **CMS requested information from Tribes on reimbursing all IHS and Tribal clinics at the Medicare Outpatient AIR**.
- CMS has committed to working with the TTAG on this proposed fix.



2. Require Medicare Advantage Plans to Pay Tribal Providers at the Medicare Outpatient AIR

- Every year, the Office of Management and Budget (OMB) uses IHS financial reports to calculate the **IHS OMB Rate**.
  - These are published annually in the Federal Register.
- These rates represent the United States' **best estimate of the cost of providing services through an IHS facility**.



2. Require Medicare Advantage Plans to Pay Tribal Providers at the Medicare Outpatient AIR

- Medicare Advantage reimburses at either:
  - the rate set out by the provider contract; or
  - if non-contracting, the rate provided under original Medicare.
- However, I/T/Us have a statutorily right under Section 206 of the Indian Health Care Improvement Act to be reimbursed at the higher of
  - the reasonable charges billed, or
  - the highest amount the plan would pay a non-government provider.

2. Require Medicare Advantage Plans to Pay Tribal Providers at the Medicare Outpatient AIR

- CMS should consider the IHS OMB Rate the "reasonable billed charge" when determining how much Medicare Advantage should pay I/T/U providers.
- The TTAG has urged CMS to address this by **<u>requiring Medicare Advantage Plans to reimburse I/T/Us at the IHS OMB Encounter Rate</u>**.

3. Improve Tribal Pharmacy Billing by Expanding Part D Tribal Addendum to all Issuers

- In 2005, CMS promulgated regulations that require Medicare Part D plans to offer contracts to I/T/U pharmacies.
- Previously, Part D plans did not often contract with I/T/U pharmacies because of several complexities such as:

Purchasing drugs off the Federal Supply Schedule	Serving only AI/ANs	Having less experience with point-of-sale technologies
Not integrating into commercial pharmacy networks	Stocking a more limited range of drugs than is required under a Part D formulary	Waiving copays for AI/ANs

Source: 42 C.F.R. 423.120(a)(6).

3. Improve Tribal Pharmacy Billing by Expanding Part D Tribal Addendum to all Issuers

- To resolve these issues, CMS required each Part D Plan to agree to enter into Tribal-specific addendum to their participating provider agreements.
- The Addendum **sets out the federal laws that apply to Tribal pharmacies including the right to be fully and fairly reimbursed for the cost of drugs from the Part D plans even though Tribes are subject to different federal requirements than other providers**.
- The Addendum supersedes any inconsistent provision in the Part D Plan's network provider agreement.

3. Improve Tribal Pharmacy Billing by Expanding Part D Tribal Addendum to all Plans

- While the Addendum has fixed the issue with Part D Plans, I/T/U pharmacies are encountering the same issues with other pharmacy plans, including

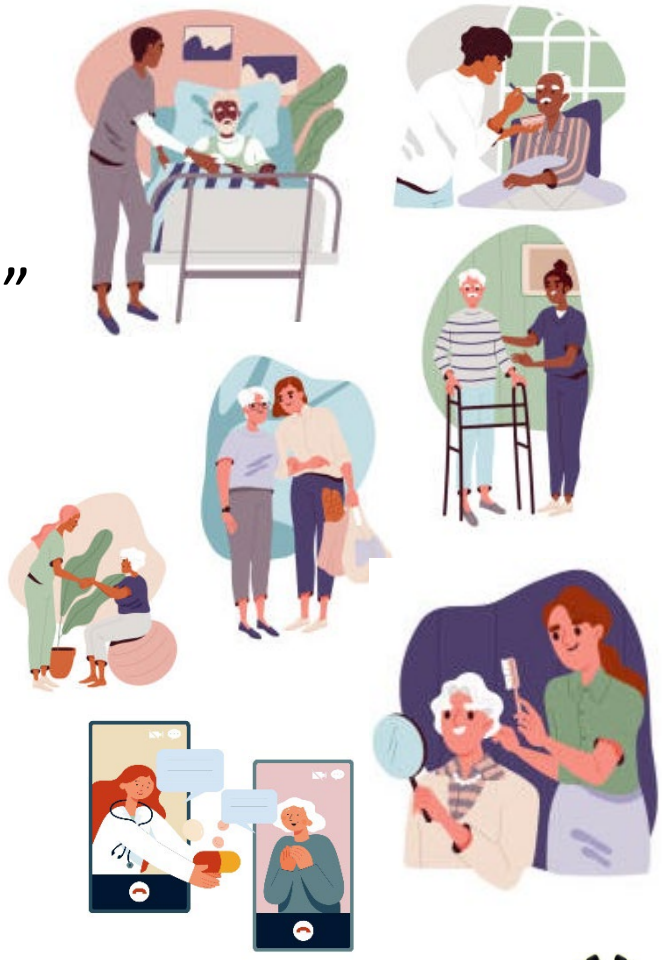
Pharmacy Benefit Managers	Health Plan Sponsors	Managed Care Companies	Commercial Insurance Companies

- These plans are refusing contracts that contain Tribal-specific provisions and refusing to reimburse correctly.
- **The CMS TTAG has developed a new addendum that would apply to all pharmacy plans**.
- The Addendum provides that Pharmacy plans may not discount reimbursement due to tribes' access to discounted pharmaceuticals on the federal supply schedule or through the 340 B program, or as a result of repackaging.

Medicaid Hot Topics

1. Four Walls Exemption Final Rule

- The CY 2025 CMS Outpatient Prospective Payment Rule permanently exempts IHS and Tribal clinics from the “four wall” requirement.
- This means that IHS and Tribal providers can bill Medicaid for community care, such as at a community center or in a patient’s home.
- The rule becomes effective January 1, 2025.



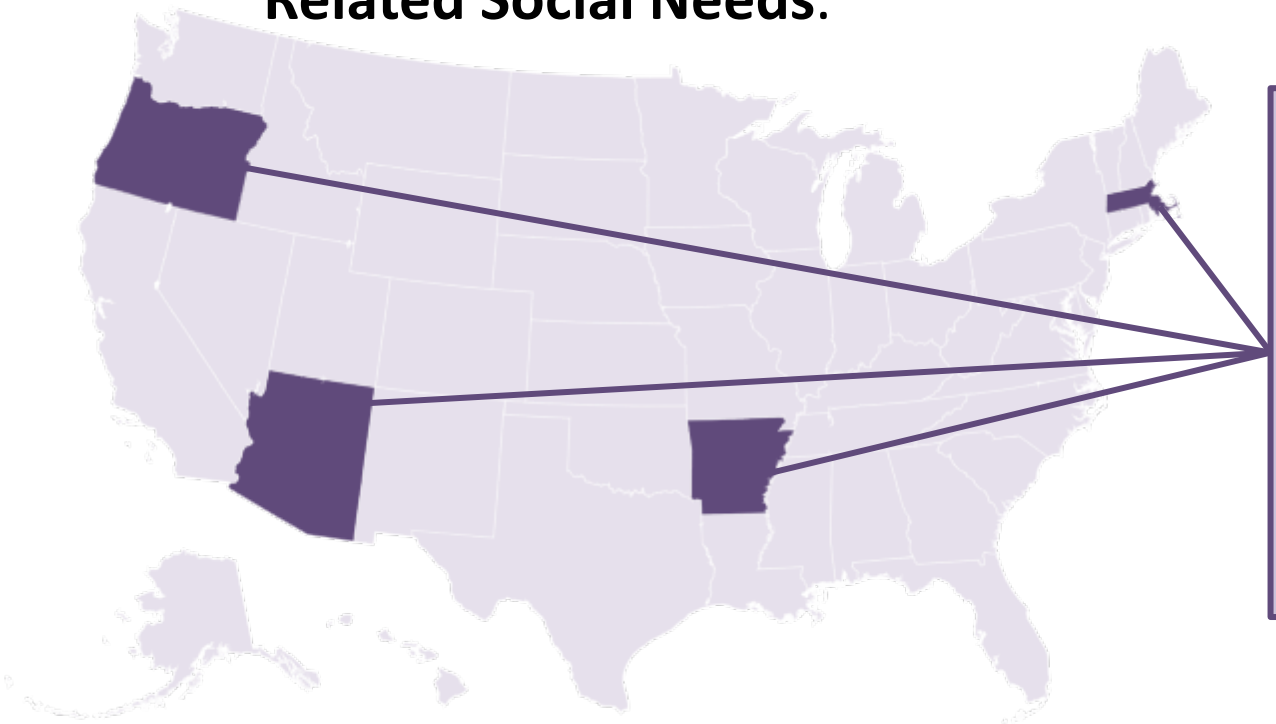
2. Require Qualified Health Plans to Pay Tribal Medicaid FQHCs at the Medicaid AIR

- The Affordable Care Act's Qualified Health Plans typically pay Tribal providers at their negotiated rates on a fee schedule.
- The ACA requires Qualified Health Plans to pay Federally Qualified Health Plans at least the amount they would be paid by their Medicaid program. 42 C.F.R. 156.235(e).
- Many State Medicaid Plans have implemented an Alternate Payment Methodology (APM) for Tribal clinics.
- Under the APM, tribal clinics can redesignate as Tribal Medicaid FQHCs, and then bill Medicaid at the IHS All Inclusive Rate for Medicaid.
- Tribal Providers who designate as Tribal Medicaid FQHCs then have a right to be paid at the IHS AIR for Medicaid.
- As Tribal Medicaid FQHCs, they have a right to be paid by ACA Qualified Health Plans at the IHS AIR for Medicaid as well.

Source:

3. Expand Tribal Access to Medicaid Billing Through Health Related Social Needs Waivers

- CMS recently approved four Section 1115 Demonstration Waivers in Massachusetts, Oregon, Arizona and Arkansas that allow State Medicaid Programs to pay for **Health Related Social Needs**.



These Waivers allow State Medicaid Programs to pay for services like:

- Rent
- Housing Improvement
- Meals/Nutrition
- Transportation

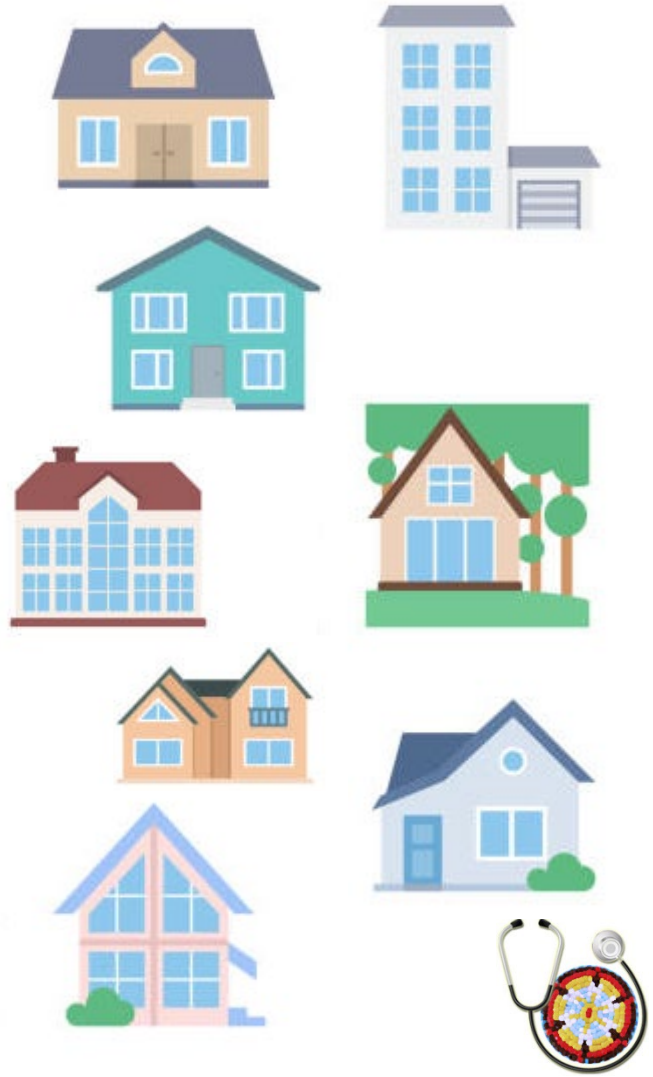
3. Expand Tribal Access to Medicaid Billing Through Health Related Social Needs Waivers

Housing Supports

• Rent • Temporary Housing • Utilities	Respite Services, such as an at-home provider or adult day care	Day habilitation Programs and Sobering Centers
↓	↓	↓
Individuals who are homeless or leaving: • Institutional care • Emergency shelter • Child welfare system	Primary Caregivers	Individuals with substance-use disorder

3. Expand Tribal Access to Medicaid Billing Through Health Related Social Needs Waivers

- Other Housing Supports
  - Pre-tenancy & tenancy-sustaining services
  - Housing transition services
  - One-time moving costs such as security deposit or movers fees
  - Medically-necessary accessibility modifications, such as carpet replacement or mold removal.
  - Medically-necessary environment modifications, such as air conditioners and heaters.

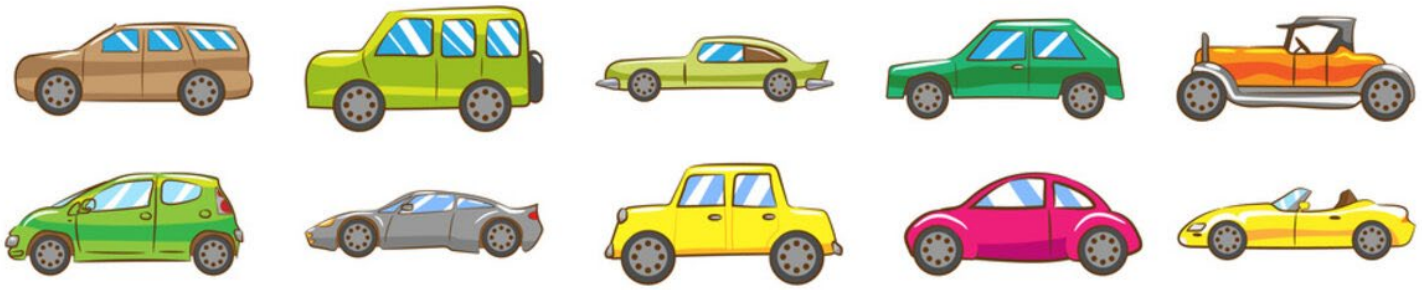


3. Expand Tribal Access to Medicaid Billing Through Health Related Social Needs Waivers

- Nutrition supports
  - Nutrition counseling and education.
  - Medically tailored meals—up to 3 meals a day for up to 6 months.
  - Meals or pantry-stocking—for children under 21 and pregnant persons.
  - Produce prescription and protein box—for up to 6 months.

3. Expand Tribal Access to Medicaid Billing Through Health Related Social Needs Waivers

- Other supports can be included on a case by case basis, including:
  - Case management, education and outreach
  - Transportation
  - Administrative and infrastructure costs



Improving Tribal Self-Insurance with Medicare-Like Rates

Use Medicare Like Rates to Reduce Costs to PRC Programs and Tribal Self-Insurance

- Hospital providers must accept payment for PRC-authorized services at no more than what the Medicare Program would pay for the same service. This is called the **Medicare-Like Rate**.
  - Excluded from this requirement are the services of physicians *not* employed or contracted by a hospital.
- Medicare Like Rates are lower than full billed charges and often lower than negotiated rates so that Tribal PRC Programs can significantly lower their healthcare costs by repricing claims at the Medicare-Like Rate.

Use Medicare Like Rates to Reduce Costs to PRC Programs and Tribal Self-Insurance

- IHS regulations also extend Medicare Like Rate requirements to non-hospital providers.
- Non-hospital providers are not required to accept payment at those rates, but many do.
- Tribal programs can opt-in to these regulations through their ISDEAA funding agreements.

Use Medicare Like Rates to Reduce Costs to PRC Programs and Tribal Self-Insurance

- Tribal Self-Insured Plans can benefit from the same savings structure by accessing **Medicare Like Rate repricing for services provided to covered AI/AN individuals by coordinating benefits with PRC programs**.
- Specifically, Tribes can amend their Tribal Self-Insurance Plan documents so that the PRC program authorizes services and renders them eligible for the Medicare Like Rate.
- Tribes can amend their plan documents so that the PRC program authorizes services and renders them eligible for MLR and then the TSIP program supplements the PRC program.
- Under these arrangements, the Tribe's TPA or TSIP program would pay the lesser of a negotiated rate or the MLR.
- Because MLR repricing applies only to PRC authorized claims, it is limited to individuals who are eligible for PRC, which does not include non-tribal member employees.

Questions?

Elliott A. Milhollin
Email: emilhollin@hobbsstraus.com
Phone: (202) 822-8282

For more information on the TSGAC Affordable Care Act/IHCIA Project, please visit the Health Reform website at: Health Reform - Tribal Self-Governance (tribalselfgov.org)

ACA/IHCIA Project Lead: Cyndi Ferguson, SENSE, Inc.
Email: cyndif@senseinc.com
Phone: 202-450-0013