



Health Care Reform in Indian Country

Self-Governance Communication & Education

Self-Governance Tribes Striving Towards Excellence in Health Care

VA Reimbursement Agreement

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Self-Governance Communication and Education

The ACA Requires the VA to Reimburse IHS and Tribal Providers for Care Provided to Native Veterans

- The ACA added Section 405 to the Indian Health Care Improvement Act, 25 U.S.C. § 1645.
- Section 405 allows IHS and tribal facilities to enter into sharing agreements between the IHS, tribes, tribal organizations and the VA and Department of Defense for the use of medical facilities.
- Section 405 also requires the VA and DOD to reimburse the IHS, tribes and tribal organizations for services they provide to individuals eligible for services by the VA and/or DOD, **notwithstanding any other provision of law.**
- In addition, Section 2901(b) of the ACA established that I/T/Us are the payors of last resort with regard to services provided to AI/ANs, **“notwithstanding any other provision of Federal, state or local law.”** 25 U.S.C. § 1623.



The VA must reimburse for PRC services in addition to direct care services

- The VA initially took the position that it was only required to reimburse IHS and tribal health care providers for direct care services – Tribes disagreed.
- In 2021, Congress enacted the PRC for Native Veterans Act, P.L. 116-311.
- The new law amends Section 405(c) of the IHClA to require the VA to reimburse IHS and tribal programs “regardless of whether such services are provided directly by the Service, an Indian tribe, or tribal organization, through purchased/referred care, or through a contract for travel described in section 213(b).”



The IHS and VA Have Negotiated a New Agreement to Cover PRC

- On December 6, 2023 the VA and IHS entered into a new reimbursement agreement that includes PRC
- VA has issued a template VA/Tribal Health Provider Agreement for the lower 48 States
- The draft VA/THP Agreement includes PRC but contains key differences from the IHS/VA agreement
 - Excludes care referred from a VA facility to a tribal facility
 - Pharmacy claims paid at a different rate



Key Difference between IHS VA Agreement and Draft VA THP Agreement

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 VI, 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 separate agreement with VA. VA providers cannot order any care or services from THPs without a separate agreement for VA purchased care. No services provided at the request of a VA provider are reimbursable under this Agreement.~~



Key Difference between IHS VA Agreement and Draft VA THP Agreement

G. Outpatient Pharmacy Services: VA shall reimburse the THP for Outpatient Pharmacy Services ~~at the lesser of the THPs reasonable billed charges or the Wholesale Acquisition Cost (WAC) plus a \$2.50 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.



Questions?

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

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