



MEMORANDUM

NORTHWEST PORTLAND AREA INDIAN HEALTH BOARD

Burns-Paiute Tribe
Chchalais Tribe
Cocur d' Alenc Tribe
Colville Tribe
Coos, Suislaw &
Lower Umpqua Tribe
Coquille Tribe
Cow Creek Tribe
Cowlitz Tribe
Grand Ronde Tribe
Hoh Tribe
Jamestown S'Klallam Tribe
Kalispel Tribe
Klamath Tribe
Kootenai Tribe
Lower Elwha Tribe
Lummi Tribe
Makah Tribe
Muckleshoot Tribe
Nez Percé Tribe
Nisqually Tribe
Nooksack Tribe
NW Band of Shoshone Tribe
Port Gamble S'Klallam Tribe
Puyallup Tribe
Quileute Tribe
Quinalt Tribe
Samish Indian Nation
Sauk-Suiattle Tribe
Shoalwater Bay Tribe
Shoshone-Bannock Tribe
Siletz Tribe
Skokomish Tribe
Snoqualmie Tribe
Spokane Tribe
Squaxin Island Tribe
Stillaguamish Tribe
Suquamish Tribe
Swinomish Tribe
Tulalip Tribe
Umatilla Tribe
Upper Skagit Tribe
Warm Springs Tribe
Yakama Nation

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www.npaihb.org

DATE: May 11, 2012

TO: Tribal Leaders, Health Directors and Board Delegates

FROM: Jim Roberts, Policy Analyst

SUBJECT: IHS-VA Agreement Deadline Extended; and Sharing Draft
Alaska-VA Template Agreement

On April 5, 2012, the IHS issued a Dear Tribal Leader Letter (DTLL) and a draft agreement (see attached), which sets forth the terms and conditions for reimbursement between Veterans Administration (VA) and IHS and Tribal facilities. The DTLL requested Tribal comments on the draft agreement by May 7, 2012. The IHS has now extended the deadline to submit comment to May 25, 2012.

IHS and VA are proposing that implementation of these agreements will begin with a demonstration project at a limited number of sites. The agencies are requesting your recommendations about this proposal, including the number and types of sites for the demonstration locations. This memorandum explains some of the issues associated with the demonstrations and draft agreement. I also provide you with a draft agreement that Alaska Tribes have also negotiated with the Alaska VHA. Included is a PowerPoint that explains the differences between the IHS and Alaska agreements. I summarize some of the differences below.

Discussion at the TSGAC Conference

During our quarterly Tribal Health Director Meeting, Portland Tribes do not want the proposed demonstration projects to preclude other arrangements to be negotiated or carried out with the VA. Portland Tribes also indicated that they should not have to await the outcome of these demonstrations for the IHS and VA to proceed with implementation on a national level. This same issue was discussed and brought up with the IHS Director at the TSGAC Spring meeting. Other issues discussed with the IHS Director included:

- Tribes do not want the HHS/IHS agreement to preclude more permissive authority to be negotiated with the VA.
- If there are going to be demonstration projects, consideration should be given to developing projects across the IHS system.
- The authority in the IHCA does not require demonstrations and this would only extend the time to carry out this very important provision.
- It is critical that Tribes respond in writing with their concerns about the agreement or demonstration projects.

Alaska Template Agreement

Simultaneous, to HHS/IHS working with the VA to negotiate a draft reimbursement agreement, Alaska Tribes were also negotiating an agreement with the Alaska VA. I have included a copy of the Alaska template and a PowerPoint that discusses the differences between the IHS and Alaska agreements. Some of the key differences in the agreements include the following:

- *Services:* The Alaska agreement includes any service for which an eligible veteran is eligible under VA statutes and regulations. The IHS agreement does not appear to cover behavioral health services. This is a critical issue to serving veterans.
- *Reimbursement:* The Alaska agreement allows reimbursement after the effective date of the agreement and preserves the ability to seek retroactive reimbursement for services provided prior to execution of the agreement. The IHS agreement is silent on retroactive reimbursement.
- *Inpatient Reimbursement Rate:* The Alaska agreement sets the inpatient reimbursement rate at the OMB Medicaid encounter rate plus VA Alaska Professional Fee Schedule. The IHS agreement sets the rate at the PPS or Medicare DRG plus Medicare Fee Schedule for professional services.
- *Outpatient Reimbursement Rate:* The Alaska agreement sets the outpatient reimbursement rate at the OMB Medicaid Encounter Rate and reimburses CHAP services. The IHS agreement set reimbursement at the OMB Medicaid encounter rate.
- *Copayments:* The Alaska agreement allows Tribal Health Programs (THP) to pay copayments on behalf of eligible Indians (they are not waived). For non-Indian beneficiaries, THPs will not charge copayments, but the VA will bill the beneficiary this amount. The VA will pay the full encounter amount and periodically provide a report of copayments that THP will pay within 45 days of receiving the report.

There are other differences between the two agreements around the number of allowed encounters, pharmacy care, claims processing, and coordinating or referring care. The PowerPoint provides an explanation of these differences. We will make sure to recommend that the more beneficial elements included in the Alaska agreement be adopted into the IHS draft agreement. We recommend that if your Tribe is providing comment on the draft agreement that you provide similar recommendations.

If you have any questions about this issue, please feel free to call me at (503) 228-4185, or by email at jroberts@npaihb.org.

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DRAFT AGREEMENT
BETWEEN
DEPARTMENT OF VETERANS AFFAIRS
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) and Tribal health programs (as defined herein) that have executed a participating Tribal health program agreement, as described below in section II for certain health care services, specifically Direct Care Services (as defined herein) provided by the IHS or Tribal health program 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 or consistent with section II, Tribal health programs.
- C. This Agreement will be implemented through local implementation plans for a demonstration project period at sites determined by VA and IHS. Reimbursements for Direct Care Services described in this Agreement initially will be authorized at only the agreed upon demonstration project sites and only for the duration as determined by VA and IHS. Once the demonstration project period has concluded, VA and IHS will transition to national implementation. Local implementation plans will be developed within 3 months of the completion of the demonstration.
- D. The parties to this agreement agree to address reimbursement for other reimbursable services not covered by this Agreement at a later date.

II. PARTICIPATING TRIBAL HEALTH PROGRAM AGREEMENT

It is the intention of the Parties (IHS and VA) that an Indian Tribe or Tribal organization that operates any health program, service, function, activity, or facility funded, in whole or part, by IHS through, or provided for in, a contract or compact with IHS under the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450 et seq.) seeking reimbursement from VA for Direct Care Services for Eligible AI/AN Veterans furnished at their facilities will execute a

participating Tribal health program agreement with a local VA facility (e.g., VA Medical Center (VAMC), Veterans Integrated Service Network (VISN)) by which the Tribal health program agrees to be bound by the terms and conditions contained in this Agreement. If a Tribal health program will not agree to any term(s) or condition(s) set forth in this Agreement, the Parties shall consult with one another to address the Tribal health program's concerns and consider alternate language for the participating Tribal health program agreement.

III. SCOPE

This Agreement governs reimbursement for Direct Care Services provided to Eligible AI/AN Veterans by:

- A. IHS operated health care facilities and programs; and
- B. Tribal health programs that
 - 1. Are carried out under a contract or compact with the Indian Health Service pursuant to the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §450 et seq., and;
 - 2. Have executed a participating Tribal health program agreement to be bound by the terms contained herein.

IV. DEFINITIONS

Direct Care Services: The term “Direct Care Services” means any health service that is provided directly by IHS or a Tribal health program.

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

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

Tribal health program: The term “Tribal health program” means an Indian Tribe or Tribal organization that operates any health program, service, function, activity, or facility funded, in whole or part, by IHS through, or provided for in, a contract or compact with IHS under the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450 et seq.). For purposes of this agreement, all references to “Tribal health program” are to Tribal health programs (as defined in the preceding sentence) that have executed a participating tribal health program agreement.

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 and Tribal health programs (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, IHS, and Tribal health programs agree to continue to work cooperatively to improve the quality of care that is provided to AI/AN Veterans. IHS, Tribal health programs 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 Research and 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 or Tribal health program. In support of administrative efficiencies, VA, Tribal health programs 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 and Tribal health programs 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, IHS or Tribal health program level.
8. Working with Tribal health programs to implement or continue to implement a patient-centered medical home model to improve the coordination of care and improve access to quality care for patients served under this agreement.

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 or Tribal health 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, 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).

D. Federally Qualified Health Centers. For facilities reimbursed by Medicare at the Medicare Federally Qualified Health Center Rate, VA shall pay for services to Eligible AI/AN Veterans at the Medicare Federally Qualified Health Center rate.

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

F. Inpatient Pharmacy Services/Outpatient Pharmacy Services/Take-Home Drugs. VA agrees to provide reimbursement for inpatient medications for Eligible AI/AN Veterans receiving direct inpatient care in IHS and Tribal hospitals. For outpatient medications, IHS, Tribes 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 the 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 14-day (Alaska: 30-day) supply.

G. Rate Review. VA will conduct reviews of the rates of services provided under this agreement during the demonstration. VA and IHS will compare the encounter rate against the CMS fee schedule to determine if the payments to the Indian Health or Tribal facilities are within an acceptable range.

VIII. APPLICABLE COPAYMENT

To the extent they are legally required, VA's requirement for copayments for certain Veterans cannot be waived under this agreement; however, VA and IHS have discussed the possibility of IHS and Tribal facilities covering any applicable VA copayment required of the Veteran, and VA will work with IHS and Tribal Organizations to develop a process.

IX. CLAIM SUBMISSION AND PAYMENT

- A. Claims for reimbursement should 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. 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.
- 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. Payment to each Tribally-operated Service Unit will be made upon receipt and processing of the claim, through industry standards. Adjustments to a claim will be provided to Tribal health program via industry standard Explanation of Benefits (EOB). Any disputes will be jointly reviewed by VA and Tribal staff to resolve.
- D. In accordance with 25 U.S.C. § 1621f, all reimbursements received under this Agreement shall be credited to the IHS or Tribal Service Unit by or through which such services were provided and shall be used as provided in 25 U.S.C. § 1641.
- E. IHS and participating Tribal health programs may, 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.
- F. If IHS or a Tribal health program seeks reimbursement under this agreement, and VA provides reimbursement for the Direct Care Services provided to an Eligible AI/AN Veteran, IHS or the Tribal health program may not seek reimbursement for such care from entities other than VA. VA shall retain the right to bill an Eligible AI/AN Veteran's third party insurer to the extent permitted by 38 U.S.C. 1729. When an Eligible AI/AN Veteran is treated by IHS or a Tribal health program under this agreement, IHS or such Tribal health program shall, consistent with applicable privacy laws, provide VA with any applicable information on each Eligible AI/AN Veterans' private insurance, Workers' Compensation coverage, Medicare Supplemental Insurance information, and information with respect to third-party tortfeasor cases arising under the Federal Medical Care Recovery Act (FMCRA), 42 U.S.C. 2651. If IHS or a Tribal health program seeks reimbursement under the terms of this agreement for Direct Care provided to eligible AI/AN Veterans with third party insurance who are being treated for HIV, sickle cell anemia, drug or alcohol abuse, IHS or the Tribal health program shall seek to obtain from the

Eligible AI/AN Veteran and provide to VA a fully executed VA Form 10-5345, “Request For and Authorization To Release Medical Records or Health Information” so that VA may pursue reimbursement for medical care for any claims arising under 38 U.S.C. 1729. If IHS or a Tribal health program seeks reimbursement under the terms of this agreement for Direct Care provided to eligible AI/AN Veterans that IHS or the Tribal health program have determined have been injured due to the negligence of a third party under the Federal Medical Care Recovery Act (FMCRA), 42 U.S.C. 2651, IHS or the Tribal health program shall seek to obtain from the Eligible AI/AN Veteran and provide to VA a fully executed VA Form 4763, Power of Attorney and Assignment, and VA Form 10-5345, “Request For and Authorization To Release Medical Records or Health Information” so that VA may pursue reimbursement.

- G. Payment to IHS or the Tribal health program 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 or the Tribal health program identifies Veterans who do not wish to enroll in VA’s system of patient enrollment, VA and IHS or the Tribal health program will establish a process to determine eligibility.
- H. 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.

X. 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 VI, 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.

- 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. If the claimant continues to disagree after VA review of the NOD, VA will inform the claimant of further appellate rights for an appeal to the Board of Veterans Appeals (38 CFR §§17.132 & 17.133).

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 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, IHS, or Tribal health program facilities.
- C. VA, IHS and participating Tribal health programs will comply with all applicable Federal laws and regulations regarding the confidentiality of health information. Medical, health and billing records of IHS and Tribal health program 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. Patient records of a Tribal health program are not considered Federal records for the purposes of chapter 5 of title 5 of the United States Code (including the Privacy Act and the Freedom of Information Act). 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. 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.

- D. VA, IHS and to the extent applicable, participating Tribal health programs, 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 and the Tribal health program 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 or the Tribal health program 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 or the Tribal health program 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. All medical malpractice claims arising under the Federal Tort Claims Act (FTCA) for incidents occurring at IHS facilities or arising from care rendered to Indian Veterans by Tribal health providers under this agreement shall be the responsibility of the IHS or the Tribes 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 or a Tribal health provider, VA will promptly notify the designated Tribe point of contact for Tribal health providers, or 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, IHS or a Tribal facility, 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. 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, tribal leadership and tribal health directors, and others as necessary, for each demonstration site.

XIII. PERIOD OF AGREEMENT

This Agreement becomes effective upon the latest signatory date below for a period of one year.

ACCEPTED:

ACCEPTED:

DEPARTMENT OF VETERANS AFFAIRS

DEPARTMENT OF HEALTH AND HUMAN SERVICES
INDIAN HEALTH SERVICE

By: _____
Robert A. Petzel, M.D.
Under Secretary for Health

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

Date: _____

Date: _____



APR 5 2012



Dear Tribal Leader:

We are writing to continue consultation to facilitate the Department of Veteran Affairs (VA) reimbursement for direct care services provided by the Indian Health Service (IHS) and Tribal health facilities to eligible American Indian and Alaska Native (AI/AN) Veterans.

On March 5, 2012, VA and IHS sent you a letter requesting your input on the main points we propose to include in a draft underlying agreement. While we are reviewing the input submitted by Tribes on the main points document, we are now requesting your input on the draft agreement, which is enclosed. The draft agreement sets forth the underlying terms and conditions for reimbursement between VA and IHS facilities, and between VA and Tribal health facilities should Tribes elect to enter into such agreements with VA. IHS and VA are proposing that implementation of these agreements will begin with a demonstration project at a limited number of sites. We specifically request your recommendations for the demonstration project, including the types of sites, number of sites and recommended demonstration locations.

Please submit written comments to both email addresses listed below no later than 30 days from the date of this letter. We appreciate your input on this important issue.

Sincerely,

/Robert A. Petzel/
Robert A. Petzel, M.D.
Under Secretary for Health

/Yvette Roubideaux/
Yvette Roubideaux, M.D., M.P.H.
Director, Indian Health Service

Address for comments:

Email: tribalgovernmentconsultation@va.gov and consultation@ihs.gov

VA APPROVED TEMPLATE
Sharing and Reimbursement Agreement
between
Department of Veterans Affairs, Alaska VA Healthcare System
and
ALASKA TRIBAL HEALTH PROGRAM
for
Direct Care Services

RECITALS

A. Whereas, the Department of Veterans Affairs (“VA”) is committed to meeting the health care needs of all Eligible Veterans in the State of Alaska and has special expertise with regard to health issues that particularly affect Veterans;

B. Whereas, the VA has a limited number of facilities throughout the State of Alaska at which Eligible Veterans can receive care directly provided by the VA;

C. Whereas, ALASKA TRIBAL HEALTH PROGRAM (“ATHP”) is controlled by Alaska Natives and has particular expertise in providing a full range of culturally competent health services to Alaska Natives and American Indians (“AN/AIs”), including AN/AI Veterans;

D. Whereas, Tribal health programs are found throughout the State of Alaska, including rural and remote locations where there are few, if any, other providers;

E. Whereas, the VA and ATHP share a commitment to assuring that AN/AI Veterans enjoy continuity of care to the maximum extent possible;

F. Whereas, this Agreement will assure that all AN/AI Eligible Veterans in the geographic area in which ATHP operates have access to the health services they have earned and for which they are eligible without having to travel unnecessarily and that all Eligible Veterans will have access to emergency health services for which they are eligible.

IF ATHP HAS ADOPTED A RESOLUTION AUTHORIZING HEALTH SERVICES TO EVERYONE IN THE COMMUNITY OR TO NON-AN/AI VETERANS, ADD

G. Whereas, ATHP is authorized under Section 813 of the Indian Health Care Improvement Act, 25 U.S.C. § 1680c, to serve non-AN/AI Veterans so that these Veterans will also have access to health care services without having to travel unnecessarily.

1. PURPOSE

This Sharing and Reimbursement Agreement (“Agreement”) between the Department of Veterans Affairs, Veterans Health Administration (“VHA”), Alaska VA Healthcare System

FINAL VA APPROVED TEMPLATE SHARING AND REIMBURSEMENT AGREEMENT
BETWEEN VA AND INDIVIDUAL ATHPs

(“AVAHS”) and ALASKA TRIBAL HEALTH PROGRAM (“ATHP”) sets forth the terms and conditions under which AVAHS shall authorize and reimburse ATHP for Direct Care Services provided by the ATHP to Eligible Veterans.

2. AUTHORITY

38 U.S.C. § 8153

3. PARTIES

3.1 Department of Veterans Affairs, Alaska VA Healthcare System, 1201 North Muldoon Road, Anchorage Alaska 99504.

3.2 ALASKA TRIBAL HEALTH PROGRAM, *FILL IN ADDRESS*.

4. DEFINITIONS

4.1. “Alaska Native or American Indian” (“AN/AI”) means an individual who is eligible for services from the Indian Health Service (“IHS”) or a Tribal Health Program in accordance with 42 C.F.R. Part 136.

4.2. “Certified Community Health Aide” means an individual who has been certified by the IHS to provide medical care, behavioral health services, and/or dental care pursuant to the *Standards and Procedures* adopted by Community Health Aide Program Certification Board, which was established by the IHS pursuant to 25 U.S.C. § 1616l.

4.3. “Days” in this Agreement are calendar days unless otherwise detailed.

4.4. “Direct Care Services” means any Eligible Service that is provided directly by ATHP, including services delivered by Certified Community Health Aides within the scope of the Certified Community Health Aide’s certification and health care professionals working under contract arrangements with ATHP who provide such services directly through ATHP as an ATHP provider, and including services delivered through telehealth by an ATHP provider. This term includes emergency care that is provided directly by ATHP in the ATHP facility. This term does not include travel expenses incurred by the Eligible Veteran.

4.5. “Eligible Service” means any health care service for which an Eligible Veteran is eligible for under VA statutes and regulations.

4.6 “Eligible Veteran” means a Veteran who (1) is enrolled in VA’s system of patient enrollment in accordance with 38 U.S.C. § 1705 or (2) is eligible for hospital care and medical services under 38 U.S.C. § 1705(c)(2), notwithstanding the Veteran’s failure to enroll in VA’s system of patient enrollment.

4.7. “Encounter” means all Direct Care Services delivered on the same calendar day at the same location for the same presenting conditions or evaluation, provided that (1) medical

Comment [MM1]: Explanatory Note: Patients who come in for medical care often have more than one presenting condition. The intent is that if the patient comes in to see the family practice person because of a possible broken toe, sore throat and a rash that would generate one medical encounter; if on the same day he has an appointment with a mental health provider who is treating him for schizophrenia and depression that would generate one encounter; and a third appointment with a dentist to have his teeth cleaned and a crown put on that would be a third encounter. If later in the day, the patient is in a car accident, there could be a second medical encounter for the emergency room visit.

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(including laboratory and radiographic services), behavioral health and dental conditions or evaluations may each generate an encounter on the same calendar day and (2) more than one medical, behavioral health or dental encounter may occur on the same calendar day if the patient suffers an additional illness or condition requiring additional diagnosis or treatment.

4.8. “Tribal Health Program” has the meaning given that term in 25 U.S.C. § 1603(25).

5. ROLES AND RESPONSIBILITIES

5.1 Determination of Eligibility.

5.1.1 Veteran Status and Enrollment.

5.1.1.1 VA is responsible for determining whether an individual qualifies to be enrolled in its patient health care system or otherwise meets the definition of Eligible Veteran for purposes of this Agreement. Generally, a Veteran must be enrolled in VA’s system of patient enrollment to be an Eligible Veteran. An eligibility determination is normally communicated to the Veteran within 2 weeks of submission of the VA Form 10-10EZ.

5.1.1.2 ATHP may assist a Veteran in submitting an application for enrollment. If a Veteran who is eligible for services under 38 U.S.C. § 1705(c)(2) does not wish to enroll in VA’s system of patient enrollment, ATHP may submit identifying information to AVAHS Health and Eligibility, 1201 North Muldoon Road, Anchorage, Alaska 99504 or by calling 1 888-353-7574 ext. 3772 or faxing request to 907-252-6784 so that VA may determine whether the Veteran meets the definition of an Eligible Veteran in this Agreement despite the Veteran’s failure to enroll.

5.1.2 AN/AI Status. ATHP is responsible for determining whether a Veteran who seeks care from ATHP is an AN/AI. ATHP will provide information concerning its determination to the AVAHS if reimbursement for services to that Veteran is, or will be, requested.

5.2 Preauthorization and Review.

5.2.1 AN/AI Eligible Veterans. Preauthorization is not required for AN/AI Eligible Veterans receiving Direct Care Services from ATHP or from another Tribal Health Program in Alaska, provided that inpatient stays longer than three days may be subject to AVAHS review and authorization. Nothing in this Agreement authorizes AVAHS to reimburse a Tribal Health Program other than ATHP.

5.2.2 Non-AN/AI Eligible Veterans.

5.2.2.1 Emergency Treatment.

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5.2.2.1.1 Emergency treatment is defined in 38 U.S.C. § 1725(f)(1) and means, among other things, that the medical care or services are rendered in a medical emergency of such a nature that a prudent layperson reasonably expects that delay in seeking immediate medical attention would be hazardous to life or health.

5.2.2.1.2 When emergency treatment is not pre-authorized as a Direct Care Service under 5.2.2.2, VA will make payment or reimbursement for emergency treatment provided by ATHP to a non-AN/AI Eligible Veteran only if the requirements under 38 U.S.C. §§ 1725 and 1728 and 38 C.F.R. §§ 17.120-132 and 17.1000-1008 are met.

5.2.2.2 Other Direct Care Services.

[INSTRUCTION: OPTION SELECTION AT TIME OF AGREEMENT EXECUTION]

OPTION 1 (Locations without an AVAHS Facility): AVAHS shall reimburse ATHP for any Direct Care Service provided to a non-AN/AI Eligible Veteran that has been preauthorized by AVAHS. Upon request by ATHP, AVAHS shall grant initial pre-authorization for no fewer than 6 Encounters for Direct Care Services (other than behavioral health services or dental) and 4 Encounters for behavioral health services during each 12 month period beginning on the date of the non-AN/AI Eligible Veteran's initial enrollment or enrollment anniversary. AVAHS may pre-authorize additional services in the same calendar year for which the non-AN/AI Enrolled Veteran is eligible upon submission of a preauthorization request by ATHP.

OPTION 2 (Locations with an AVAHS Facility.) AVAHS may grant pre-authorization for a non-AN/AI Eligible Veteran to obtain Direct Care Services from ATHP. VA will determine whether to grant pre-authorization. Factors that may be considered include whether the services the non-AN/AI Eligible Veteran needs are reasonably available to the Eligible Veteran at an AVAHS facility. ***IF OPTION 2 IS APPLICABLE, AGREEMENT ABOUT THE CATCHMENT AREA WILL NEED TO BE REACHED AND INSERTED.***

5.2.2.3. Process. Except as provided in section 5.2.2.2, pre-authorization is required for payment of care provided to non-AN/AI Eligible Veterans. ATHP is responsible for submission of the required information to AVAHS Integrated Care, 1201 North Muldoon Road, Anchorage, Alaska 99504. AVAHS shall conduct a review of the request and provide a response within 7 days for urgent or 30 days for routine care after receipt of the required information. ATHP can contact AVAHS by mail, by calling 1-888-353-7574 ext. 6904, or by fax at 907-257-6740. For further information, refer to the VA Vendor Guide book or www.alaskava.gov.

5.2.2.4. Determination of Eligible Services. ATHP may obtain information from AVAHS before delivering a particular Direct Care Services about whether the Eligible Veteran is eligible for the specific services proposed to be provided by submitting a request for verification for eligibility. AVAHS will verify service eligibility (and any special conditions that may apply) by contacting VA Health and Eligibility within 7 days of such request. Advance request for verification is not a condition of reimbursement for any Direct Care Service for Eligible Veterans under this Agreement. VA recommends that ATHP verify

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eligibility of an otherwise Eligible Veteran for the following services, which have restricted eligibility requirements: dental, prosthetics (including hearing aids and eyeglasses), long-term care (including nursing home care), and transplant services. ATHP may request this verification when services for a non-AN/AI Veteran are initially preauthorized under 5.2.2.2.; however, the eligibility of a particular Eligible Veteran for the service may change during the authorization period. The following services are specifically excluded from VA's Medical Benefits Package at 38 C.F.R. 17.38: cosmetic surgery that is not medically necessary; abortions and abortion counseling; in vitro fertilization; drugs, biologicals and medical devices not approved by the Food and Drug Administration ("FDA"); gender alterations; and memberships in spas and health clubs.

5.3 Notices of Available Services and Benefits.

5.3.1 Notices. In order to improve counseling and referral services for Eligible Veterans about the availability of health care and options about where and from whom it may be obtained—

5.3.1.1 AVAHS will provide ATHP with a list of VA facilities at which Veterans are able to obtain services and benefits from VA with contact information and a list of services and benefits available and will periodically update the lists as facilities and local service availability may change; and.

5.3.1.2 ATHP will provide AVAHS with a list of the hospital, clinic (including Community Health Aide clinics) and other types of facilities from which it provides Direct Care Services and a list of the types of providers and general categories of services it provides, and will periodically update the lists as facilities, locations and provider types change.

5.3.2 Effect of No Notice. Failure of either party to provide the lists identified in Sections 5.3.1 shall not affect reimbursement to ATHP under this Agreement.

5.3.3 Delivery of Notices. Notices described in this subsection will be sent to—

5.3.3.1 For VA – VA Integrated Care 1201 North Muldoon Road, Anchorage, Alaska 99604, as described in the AVAHS Vendor Guide; and

5.3.3.2 For ATHP – *FILL IN*.

5.4 Referral for Health Care Services Other than Direct Care Services.

5.4.1 Generally. If an ATHP patient who is an Eligible Veteran requires services beyond the scope of services ATHP can provide directly, ATHP will assist the Eligible Veteran to identify services that VA may provide. Contact may be made to AVAHS Integrated Care Department by calling 1-888-353-7574 ext. 6904 or faxing VA request form for Non-VA Care to 907- 257-7479 as outlined in the VA Vendor Guide book at www.alaskava.gov.

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5.4.2 Travel Benefits. VA will provide beneficiary travel benefits for Eligible Veterans in accordance with 38 U.S.C. § 111 and part 70, title 38 C.F.R. More information about VA travel benefits is available at www.alaska.va.gov, by calling the VA Travel Office at 1-888-353-7574 ext.4738, or referring to the VA Vendor Guide book. A request for travel benefits may be made in advance of the appointment to AVAHS Beneficiary Travel Section, 1-888-353-4574, ext. 4738, by the Eligible Veteran or ATHP on behalf of the Eligible Veteran. For an AN/AI Eligible Veteran needing travel to an Alaska Tribal Health Program for VA authorized care, documentation of the appointment at the Tribal Health Program site shall accompany the request. Once travel is approved, the Eligible Veteran (or the ATHP) must contact VA Travel Section, which will make the travel arrangements for the Eligible Veteran.

5.4.3 Coordination of Care. The AVAHS Integrated Care Department will coordinate the location of needed care in the most appropriate site and will enter the appointment into AVAHS System for non-AN/AI Eligible Veterans and for AN/AI Eligible Veterans being referred to a provider other than an Alaska Tribal Health Program. Once the appointment is made, travel benefits may be requested and arranged as provided in section 5.4.2.

5.5 Continuing Services to Non-AN/AIs. If ATHP decides to discontinue offering services to Non-AN/AI Eligible Veterans, it will provide notice to AVAHS not less than 90 days in advance of the effective date of the decision and will complete any pre-authorized course of care for such an Eligible Veteran who is already a patient with an active plan of care until the care plan is completed or the patient can be transferred to another appropriate healthcare provider.

6. REIMBURSEMENT AND PAYMENT

6.1 Basic Conditions of Reimbursement and Payment.

6.1.1 Generally. AVAHS shall reimburse ATHP only for Direct Care Services provided to an Eligible Veteran.

6.1.2 Applicability of Agreement. This Agreement governs payment for only those Direct Care Services provided to an Eligible Veteran after the effective date of this Agreement. Subject to this limitation, and provided other applicable requirements of this Agreement have been satisfied, AVAHS shall reimburse ATHP for Direct Care Services delivered on or after the date of application for enrollment to an individual who applies for enrollment in VA's system of patient enrollment and is subsequently enrolled.

6.1.3 Other Rights. Nothing in this Agreement shall be construed to waive any statutory claim to which ATHP may assert it is entitled under the Indian Health Care Improvement Act or other applicable law, including the right to recover for services provided to certain Veterans prior to the date of this Agreement. Nor shall this Agreement preclude the parties from entering into other agreements to address services provided before the effective date of this Agreement or other matters not expressly addressed in this Agreement.

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6.2 Reimbursement Rates.

6.2.1 Generally. Except to the extent inconsistent with the rate methodology explained in this subsection, AVAHS shall reimburse ATHP for Direct Care Services on a per Encounter basis at the all inclusive rate for Alaska for inpatient or outpatient services, as applicable, based on the date of service, approved for the calendar year in which the service was provided by the Director of IHS and published for each calendar year in the *Federal Register*. All reimbursements provided for under this subsection are subject to the other applicable requirements and conditions of this section.

6.2.2 Inpatient Hospital Services. AVAHS shall reimburse ATHP for inpatient hospital services at the all inclusive rate approved each year by the IHS Director under the title "Inpatient Hospital Per Diem Rate (Excludes Physician/Practitioner Services)." This rate does not include physician and other practitioner services, which shall be paid according to the "VA Alaska Professional Fee Schedule" for the applicable fiscal year. The "VA Alaska Professional Fee Schedule" is included in VA's Alaska Vendor Guide.

6.2.3 Outpatient Hospital Services. AVAHS shall reimburse ATHP for outpatient hospital services at the all inclusive rate approved each year by the IHS Director under the title "Outpatient Per Visit Rate (Excluding Medicare)."

NOTE: ANMC AND YKHC RECEIVE A LOWER RATE IN WHICH PHYSICIAN SERVICES HAVE BEEN EXCLUDED. FOR THEM THE LANGUAGE SHOULD BE: AVAHS shall pay for outpatient hospital services at the all inclusive rate negotiated each year with the Alaska Medicaid program under which the physician and other practitioner services are eliminated from the all inclusive rate approved each year by the IHS Director under the title "Outpatient Per Visit Rate (Excluding Medicare)" and the physician and other practitioner services shall be paid according to the "VA Alaska Professional Fee Schedule" for the applicable fiscal year.

6.2.4 Ambulatory Surgical Services. AVAHS shall reimburse ATHP at established Medicare rates for freestanding Ambulatory Surgery Centers. Physician and other practitioner services, which are not included in such rates, shall be shall be reimbursed according to the "VA Alaska Fee Schedule" for the applicable fiscal year.

6.2.5 Clinic Services, Including Certified Community Health Aide Services. Except as otherwise provided above in this subsection, AVAHS shall reimburse ATHP for all Direct Care Services provided by its physicians and other practitioners, at the all inclusive rate approved each year by the IHS Director under the title "Outpatient Per Visit Rate (Excluding Medicare)." An Encounter in which services were provided only by Certified Community Health Aides will be reimbursed at 85% of the all inclusive rate approved each year by the IHS Director under the title "Outpatient Per Visit Rate (Excluding Medicare)."

6.2.6 Pharmacy Services.

6.2.6.1 Reimbursement Rate. To the extent pharmaceuticals are reimbursable under this Agreement, AVAHS shall reimburse ATHP a dispensing fee at a rate

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approved by VA's Consolidated Mail Outpatient Pharmacy ("CMOP") for purchases and for the acquisition cost of the drugs at rates equivalent to what AVAHS most recently paid CMOP for the same drug.

6.2.6.2 Formulary. AVAHS will routinely reimburse ATHP only for drugs on the formulary used by AVAHS. Requests for reimbursement of non-formulary drugs will be submitted to VA Pharmacy and processed according to AVAHS policy on non-formulary drugs by mail to Alaska VA Healthcare System, Attn: 119 (Pharmacy), Chief, Pharmacy, 1201 North Muldoon Road, Anchorage, Alaska, 99504, telephone 1-800-907-257-4805, or fax 907-257-6755. For more information refer to the VA's Alaska Vendor Guide.

6.2.6.3 Other Conditions of Reimbursement. Subject to the provisions of sections 6.2.6.1 and 6.2.6.2, AVAHS will reimburse ATHP for drugs provided to Eligible Veterans under the following conditions.

6.2.6.3.1 AN/AI Eligible Veterans. AVAHS will reimburse ATHP for drugs provided to an AN/AI Eligible Veteran during an outpatient visit, and for prescriptions filled by ATHP.

6.2.6.3.2 Non-AN/AI Eligible Veterans. AVAHS will reimburse ATHP for drugs provided to a non-AN/AI Eligible Veteran during an outpatient visit and for an initial supply that shall not exceed a period of 30 days of prescribed drugs. ATHP shall refer Non-AN/AI Eligible Veterans to a VA facility or CMOP to fill prescriptions other than for the initial 30 day supply.

6.2.6.4 Referral to CMOP. AVAHS will provide ATHP with information about how to make referrals to CMOP for Eligible Veterans so they may obtain their prescriptions through the VA CMOP.

6.2.7 Other Services. To the extent ATHP provides other Direct Care Services for which the Veteran is eligible under VA benefit rules (i.e. that are an "eligible service" as defined in this Agreement), such as home care, residential treatment for mental health or substance abuse diagnosis or treatment, and nursing home, and not covered under Section 6.2.1 through 6.2.6, AVAHS and ATHP will work during the Transition Period provided for under Section 6.4.4 to agree upon rates or will agree on rates prior to the onset of such services.

6.3 Co-Payments. VA's requirements for copayments by certain Eligible Veterans cannot be waived under this Agreement. ATHP does not charge copayments to AN/AI Eligible Veterans for the services covered by this Agreement. Co-payments due to VA shall be paid or collected as provided in this subsection.

6.3.1 AN/AI Eligible Veterans. As claims are submitted, AVAHS shall pay ATHP the full amount of reimbursement provided for under this Agreement. AVAHS will determine the amount of copayments that VA is required to collect for Direct Care Services provided to Eligible Veterans by ATHP, and on a periodic basis submit a report of those

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copayment amounts to ATHP. ATHP shall reimburse AVAHS for the copayment amounts specified in the report within 45 days of receiving the report.

6.3.2 Non-AN/AI Eligible Veterans. AVAHS shall pay ATHP the full amount of reimbursement provided for under this Agreement. AVAHS is solely responsible for collecting the amount of copayment due from any Non-AN/AI Eligible Veteran.

6.4 Claims Submission and Processing.

6.4.1 Form of Claims.

6.4.1.1 Basic Requirements. Claims for reimbursement from ATHP may be submitted to AVAHS electronically or in paper form. 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 that are in 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). Claims submitted electronically shall comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") standards for electronic transactions. All claims submitted for services provided to Eligible Veterans who the ATHP has determined to be an AN/AI shall include "IHS" in the last line under the claim field for other insurers so that VA can distinguish between claims for services provided to AN/AI and non-AN/AI Eligible Veterans.

6.4.1.2 Other Data. AVAHS and Tribal Health Programs will meet during the Transition Period provided for in Section 6.4.4 to more specifically review and agree upon other data that may be required to be included in claims to be submitted under Section 6.4.1.1.

6.4.2 Claims Submission. Claims should be submitted via Electronic Data Interchange ("EDI"). To register and/or submit EDI claims please call 1-800-845-6592, or visit the following website, [Emdeon](#). For those claims which cannot be submitted electronically please send the paper claims to the Alaska VA Healthcare System, attn: Fiscal Department, 1201 North Muldoon Road, Anchorage, Alaska 99504.

6.4.3 Timely Filing. Claims for Direct Care Services provided after the effective date of this Agreement, not submitted to AVAHS within 150 days from the date of service, shall not be reimbursed by AVAHS, provided that AVAHS may waive this time limit for good cause.

6.4.4 Transition. ATHP will submit no claims during the first 60 days after the effective date of this Agreement in order to ensure adequate education and training for ATHP and VA personnel. The initial timely filing period will be extended to 180 days to accommodate the delay in beginning to file claims during this initial transition period.

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6.5 Payment and Adjustments.

6.5.1 Timely Payment. AVAHS will make payment on claims submitted electronically within 30 days of receipt and processing and within 45 days of receipt for claims submitted in paper form. An Explanation of Benefits (EOB) that satisfies industry standards will be provided by AVAHS to ATHP.

6.5.2 Adjustments.

6.5.2.1 Individual Claim Adjustments. Any adjustments to the amount due to ATHP under this section will be identified in the EOB. Any disputes will be jointly reviewed by AVAHS and ATHP staff to resolve.

6.5.2.2 Changes in the All Inclusive Rate. To the extent an all inclusive rate approved by the Director of IHS is the basis of reimbursement and is adjusted subsequent to the beginning of the calendar year in which such rates are effective for the date of service, AVAHS shall make initial payments to ATHP based on the previous year's rate applicable to the service, and shall, within 90 days after upon publication of the current year's rates, calculate and transmit to ATHP a report of the difference between the amounts paid and the amount due according to the new rates and payment for the difference if the amount due has increased or an invoice for the difference if it decreased. In the event of a decrease in the rate, the ATHP shall reimburse AVAHS for the difference within 45 days after receipt of the report and invoice.

6.5.3 Supporting Information. ATHP shall, consistent with applicable privacy laws, provide AVAHS copies of medical records to support the claims submitted for reimbursement upon request from AVAHS. The request from AVAHS for medical records to support the claims must be in writing (which may include electronic mail communications). Communications and exchanges involving sensitive personal information shall be conducted in an appropriately secure manner. 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.

6.5.4 Other Payments. If ATHP seeks reimbursement under this Agreement, and AVAHS provides reimbursement for the Direct Care Services provided to the eligible Veteran, such payment shall be considered payment in full and ATHP may not seek reimbursement for such care from entities or individuals other than VA.

6.5.5 Information Sharing.

6.5.5.1 AVAHS retains the right to bill an Eligible Veteran's third party insurer to the extent permitted by 38 U.S.C. § 1729. When an Eligible Veteran is treated by ATHP under this Agreement, ATHP shall, consistent with applicable privacy laws, provide AVAHS with any applicable information regarding the Eligible Veterans' private insurance, Workers' Compensation coverage, Medicare Supplemental Insurance information, and

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information with respect to third-party tortfeasor cases arising under the Federal Medical Care Recovery Act ("FMCRA"), 42 U.S.C. § 2651.

6.5.5.2 If ATHP seeks reimbursement under the terms of this Agreement for Direct Care Services provided to Eligible Veterans with third party insurance who are being treated for HIV, sickle cell anemia, drug or alcohol abuse, ATHP shall seek to obtain from the Eligible Veteran, and provide to VA, a fully executed VA Form 10-5345, "Request For and Authorization To Release Medical Records or Health Information" so that VA may pursue reimbursement for medical care for any claims arising under 38 U.S.C. § 1729.

6.5.5.3 If ATHP seeks reimbursement under the terms of this Agreement for Direct Care Services provided to an Eligible Veteran who ATHP has determined to have been injured due to the negligence of a third party, ATHP shall seek to obtain from the Eligible AI/AN Veteran and provide to VA a fully executed VA Form 4763, Power of Attorney and Assignment, and VA Form 10-5345, "Request For and Authorization To Release Medical Records or Health Information" so that VA may pursue reimbursement under the Federal Medical Care Recovery Act (FMCRA), 42 U.S.C. 2651.

6.5.6 Denied Claims. Nothing in this Agreement prohibits ATHP from seeking reimbursement from any other payer, including the Veteran (if consistent with ATHP's policies) for Direct Case Services provided to a Veteran for which VA is not responsible due to the Veteran being ineligible for such service under VA benefit rules (i.e. services is not an "eligible service" as defined in this Agreement) or for any other reason, or for which VA denies payment for any reason.

6.6 Denial, Reconsideration and Appeal

6.6.1 Denial. AVAHS may only deny a claim or a portion of a claim for Direct Care Services provided by ATHP under the following conditions.

6.6.1.1 Payment for services provided to a Veteran may be denied only if:

6.6.1.1.1 the Veteran is not an Eligible Veteran as defined in the Agreement;

6.6.1.1.2 the care or services provided are not Direct Care Services or were not pre-authorized, if required;

6.6.1.1.3 the care or services provided are not otherwise reimbursable under the terms of this Agreement;

6.6.1.1.4 the claim was not submitted as required under Section 6.4 of this Agreement; or,

6.6.1.1.5 the information needed to adjudicate the claim, consistent with the information contained on the electronic HCFA and UB forms (or other applicable form), is not provided.

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6.6.2 Notice of Denial. If AVAHS denies reimbursement for a claim, AVAHS shall notify ATHP of the denial in writing together with a statement of the reason for the denial. The notice shall advise that ATHP 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. AVAHS shall issue a decision on the request for reconsideration in writing within 90 days. In the event that ATHP disputes AVAHS's request for reconsideration decision, ATHP may avail itself of the Disputes process in Section 9.

7. QUALITY MEASURE SURVEILLANCE/REPORTING CRITERIA

7.1 Applicable Standards. Pursuant to 25 U.S.C. § 1647a, ATHP must satisfy only those generally applicable State or other requirements for participation as a provider of health care services, provided ATHP, and its providers, may not be subject to licensure by the State of Alaska as provided for in 25 U.S.C. §§ 1621d(a)(1)(A), 1621t, and 1647a(2) or other applicable State or Federal law. ATHP satisfies the Centers for Medicare and Medicaid Services (“CMS”) conditions of participation/conditions of coverage. **INSTRUCTION: IF ATHP OPERATES A HOSPITAL ADD:** ATHP Hospital will be accredited by The Joint Commission or another equivalent accrediting body.

7.2 Quality Improvement Activities. AVAHS and ATHP agree to continue to work cooperatively to improve the quality of care that is provided to Eligible Veterans. AVAHS and ATHP therefore agree to the following activities:

7.2.1 joint review of selected and agreed upon clinical outcome performance measures/monitors/targets; and,

7.2.2 collaboration on improving underperforming measures/monitors/targets.

7.3 Medical Quality Assurance Activities. At least annually AVAHS and ATHP agree to use existing medical quality assurance activities, as required under accreditation or certification standards or maintained for reporting to IHS, unless other activities or criteria have been agreed upon. ATHP agrees to share information with VA regarding its medical quality assurance activities, which shall include periodic review of care utilization (health system level trends) and care delivery consistent with current standards of care and evidence-based practices.

7.4 Quality of Care Review. AVAHS will meet at least annually with representatives Alaska Tribal Health Programs to review the overall quality of care provided to AN/AI Eligible Veterans served under this Agreement. AVAHS and ATHP will implement joint system-wide quality improvement activities as needed.

7.5 Ad Hoc Meetings. AVAHS will convene ad hoc meetings to discuss program-specific quality issues if concerns develop.

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7.6 Patient Grievances. AVAHS and ATHP will develop a joint process to address patient grievances and complaints that are not resolved at the local AVAHS or ATHP program level.

8. GENERAL PROVISIONS

8.1 Veteran's Choice of Provider. Nothing in this Agreement affects the right of AN/AI Eligible Veterans to choose whether they receive Direct Care Services in VA or ATHP facilities. Nothing in this Agreement prevents ATHP from providing services to Non-AN/AI Veterans for which VA is not responsible under applicable Federal law or regulation or for which the Non-AN/AI Veteran is willing to assume financial responsibility.

8.2 Privacy Standards.

8.2.1 Generally. VA and ATHP will comply with all applicable Federal laws and regulations regarding the confidentiality of health information. VA has determined that a Business Associate Agreement pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") is not required between VA and ATHP to carry out any of the responsibilities under this Agreement.

8.2.2 ATHP Records. Medical, health and billing records of ATHP 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. Pursuant to the Indian Self-Determination and Education Assistance Act, as amended, ATHP's patient records may not be considered Federal records for the purposes of chapter 5 of title 5 of the United States Code (including the Privacy Act and the Freedom of Information Act) or may be considered Federal records for only limited purposes under those provisions.

8.2.3 VA Records. 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.

8.2.4 Exchange of Medical Records. 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.

FINAL VA APPROVED TEMPLATE SHARING AND REIMBURSEMENT AGREEMENT
BETWEEN VA AND INDIVIDUAL ATHPs

8.3 Rate Review. For review and examination purposes, and only 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 ATHP that are specifically related to determining compliance with 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. On an annual basis AVAHS and ATPH will review previous year's business activity to ensure appropriateness of the reimbursement methodology.

8.4 Medical Malpractice. ATHP has medical malpractice insurance under the Federal Tort Claims Act ("FTCA") and, possibly other professional liability coverage that covers Direct Care Services provided under this Agreement. VA will bear no responsibility for claims arising from health care provided to a Veteran under this Agreement. If VA receives a medical malpractice claim directly from a Veteran that primarily involves medical care rendered by ATHP, VA will promptly notify *ATHP FILL IN*. Where VA is identified as an involved party in a claim submitted to HHS, IHS or ATHP, ATHP 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.

8.5 Other Agreements, Contracts, and Grants. Nothing in this Agreement

8.5.1 supersedes any other Agreements, contracts or grants between VA and ATHP, except to the extent the terms are expressly inconsistent, in which case this Agreement shall control; nor,

8.5.2 makes ATHP ineligible for funding or reimbursement from VA under other provisions of law, grants, or contracts that are not inconsistent or duplicative of the funding provided under this Agreement.

8.6 Rights of Veterans. Nothing in this Agreement restricts the right(s) of a Veteran to challenge or dispute, pursuant to Federal law or regulation, an eligibility determination made by VA.

9. DISPUTES. The Parties shall utilize all reasonable efforts to resolve any dispute at the lowest administrative level possible. In the event that either Party determines that further efforts are not conducive to resolving a dispute, in conjunction with the procedures set forth in Section 6.6., a dispute arising under or relating to this Agreement shall be processed and resolved in accordance with this section.

9.1 As used herein, "claim" means a written demand or assertion by one of the parties seeking, as legal right, the payment of money, adjustment or interpretation of sharing agreement terms, or other relief, arising or relating to this Agreement.

9.2 Any dispute or claim arising out of or relating to this Agreement on behalf of the ATHP 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 the ATHP within a reasonable

FINAL VA APPROVED TEMPLATE SHARING AND REIMBURSEMENT AGREEMENT
BETWEEN VA AND INDIVIDUAL ATHPs

time period. The ATHP shall comply with any decision of the VA Contracting Officer pending final resolution of the matter.

9.3 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 arbitration, and judgment upon any award rendered by the arbitrator(s) may enter into any court having jurisdiction thereof. The neutral arbitrator 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 at no cost.

9.4 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.

10. SURVIVAL OF TERMS.

The rights and obligations of the parties under sections 6 (reimbursement and payment), 8.2 (privacy standards), 8.3 (rate review), 8.4 (medical malpractice), 9 (disputes) shall survive expiration or cancellation of this Agreement. All other rights and obligations arising solely from this Agreement shall cease upon expiration or cancellation of the Agreement, provided expiration or cancellation of the Agreement shall have no effect on statutory rights or responsibilities of the parties.

11. EFFECTIVE DATE, TERM, TERMINATION, AND AMENDMENT.

11.1 Effective Date.

This Agreement shall become effective on the date when signed by all parties. The only official authorized to legally bind AVAHS is the VA Contracting Officer. **ATHP FILL IN EQUIVALENT INFORMATION.**

11.2 Term.

This Agreement shall remain in effect for a term of five years from the effective date. The Agreement may be extended by amendment agreed upon under Section 11.3.

11.3 Amendment.

Except for Cancellation, this Agreement may be revised or amended only in writing by ATHP and AVAHS. Such amendments must be signed by the VA Contracting Officer for VA and by **ATHP FILL IN** for ATHP.

11.4 Cancellation.

FINAL VA APPROVED TEMPLATE SHARING AND REIMBURSEMENT AGREEMENT
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The VA may cancel this Agreement at any time with at least 90 calendar days written notice by the Contracting Officer to the ATHP's **FILL IN TO WHOM NOTICE MUST BE SENT** without further liability to the VA. The VA shall be responsible for payment for all use of ATHP resources and services rendered prior to effective date of cancellation. The ATHP may cancel this Agreement at any time with at least 90 calendar days written notice by the ATHP **FILL IN TITLE OF PERSON WITH AUTHORITY** to the Contracting Officer, without further liability to the VA or ATHP. *See also*, Section 5.5 for partial cancellation by ATHP.

SIGNATURE BLOCKS:

_____/_____
DATE
Contracting Officer
SAO West NCO 20

Concurs:

_____/_____
, Director
Alaska VA Healthcare System DATE

SIGNATURE BLOCK FOR ATHP

Sonosky, Chambers, Sachse,
Miller & Munson, LLP

*A national law firm devoted to representing
Native American interests*

Sharing Health Care Resources National Consultation Draft and Alaska Tribal Health Program – VA Template

2012 Self-Governance Annual Conference
May 8, 2012

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Washington, DC

Juneau, AK

Anchorage, AK

Albuquerque, NM

San Diego, CA

Two Lines of Authority

38 U.S.C. § 8153 – VA Sharing Agreements

*25 U.S.C. § 1645(c) – Indian Health Program right to be reimbursed by VA and DOD “where services are provided through an Indian Health Program to beneficiaries eligible for services from either such Department, **notwithstanding any other provision of law.** (Effective March 23, 2010)*



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Who Are the Parties

National Consultation Draft – Agreement between IHS and VA in which THPs agree to be bound by terms and conditions of master agreement and if they won't VA and IHS consult with each other to address the concerns.

Alaska VA Template – Any AK THP enters into agreement directly with VA and if the THP doesn't like the terms, it negotiates directly with VA.



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What's Covered

Alaska Template: Eligible Services, which means any health care service for which an eligible veteran is eligible under VA statutes and regulations.

National Consultation Draft: VA Medical Benefits package under 38 C.F.R. § 17.38: basic care, outpatient medical, surgical, mental health, substance abuse, prescription drugs including OTC, emergency care, bereavement counseling, rehabilitative services, marriage & family therapy, DME, home health, hospice, extended care services (inc. adult day care and respite care), travel, preventive care, health education, eye care, genetic counseling, immunizations

Reimbursement - Retroactive

National Consultation Draft –

Alaska Template – Agreement governs payment for only those Direct Care Services provided . . . after the effective date of this Agreement. Sec. 6.1.2

“Nothing in this Agreement shall be construed to waive any statutory claim to which ATHP may assert it is entitled under the IHClA or other applicable law, including the right to recover for services provided to certain veterans prior to the date of this Agreement. Nor shall this Agreement preclude the parties from entering into other agreements to address services provided before the effective date of this Agreement or other matters not expressed in this Agreement. Sec. 6.1.3.

Reimbursement - Inpatient

National Consultation Draft – prospective payment system or Medicare DRG + Medicare fee schedule for professional services

Alaska Template – Medicaid inpatient encounter rate + VA Alaska Professional Fee Schedule



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Outpatient Hospital and Clinic Services

National Consultation Draft – Medicaid encounter rate

Alaska Template – Medicaid encounter rate for each allowed encounter, including encounters with certified community health aides (medical, behavioral health, and dental). If only community health aide, then 85% of encounter.



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How Many Encounters Per Day?

National Consultation Draft -

Alaska Template – “All Direct Care Services delivered on the same calendar day at the same location for the same presenting conditions or evaluation, provided that (1) medical (including laboratory and radiographic services), behavioral health and dental conditions or evaluations may each generate an encounter on the same calendar day and (2) more than one medical, behavioral health or dental encounter may occur on the same calendar day if the patient suffers an additional illness or condition requiring additional diagnosis or treatment.



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Pharmacy

National Consultation Draft – VA will pay for inpatient medications. Outpatient emergency 14 days (Alaska 30 days). Reimbursement of cost. Then refer veteran to CMOP.

Alaska Template – Inpatient: none, included in encounter rate. Outpatient: dispensing fee \$1.93 plus FSS acquisition cost. Only for drugs in VA formulary unless get approval. For AI/AN veterans unlimited time; for non-AI/AN veterans, 30 day maximum.



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Other Services

National Consultation Draft – The IHS and VA agreed “to address reimbursement for other reimbursable services not covered by this Agreement at a later date.” Sec. I.D.

Alaska Template – “To the extent ATHP provides other Direct Care Services for which the Veteran is eligible under VA benefit rules, . . . , such as home care, residential treatment for mental health or substance abuse diagnosis or treatment, and nursing home, and not [otherwise covered in Agreement], AVAHS and ATHP will work during the transition period . . . to agree upon rates or will agree on rates prior to the onset of such services.” Sec. 6.2.7.



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Copayments

National Consultation Draft – To the extent they are legally required, VA’s requirements not waived under this agreement. VA and IHS have discussed the possibility of IHS and Tribal facilities covering any applicable VA copayment required of the Veteran, and VA will work with IHS and Tribal Organizations to develop a process.” Sec. VIII.

Alaska Template – VA’s requirements for copayments not waived under Agreement. For non-AI/AN Veterans VA will pay full amount and collect co-payment from Veteran. For AI/AN Veterans, VA will pay full amount and periodically provide report of copayments that ATHP will pay within 45 days of receiving the report.



Claims Processing

National Consultation Draft – Electronic or paper; must be filed within 1 year. Payment by VA: upon receipt and processing of the claim, through industry standards. Sec. IV.

Alaska Template – Electronic or paper; must be filed within 150 days (or longer for good cause). Payment by VA: within 30 days for electronic claims and 45 days for paper. Adjustments to annual encounter rates will be made by VA within 90 days after publication. Sec. 6.4 and 6.5.



Referrals

National Consultation Draft –

Alaska Template – Contact information and process for referring Veterans to VA for travel benefits and services beyond the scope of the Alaska Tribal Health Programs. Sec. 5.4.



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Who May Be Served and Preauthorization

National Consultation Draft – Applies to AI/AN only. No preauthorization.

Alaska Template – Applies to AI/AN and non-AI/AN Veterans. No preauthorization for AI/ANs. For non-AI/AN, in rural area, upon request by Tribal Health Program, VA will authorize 6 encounters for Direct Care Services (other than behavioral health or dental) and 4 behavioral health encounters for a 12 month period, plus more if need presented. In non-rural areas, only upon preauthorization.



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Term of Agreement and Cancellation

National Consultation Draft – One year term.

Alaska Template - Five year term; cancellation by either party upon 90 days notice.



Sonosky, Chambers, Sachse, Miller & Munson, LLP

Presenter

Myra M. Munson is a partner in the Juneau office of Sonosky, Chambers, Sachse, Miller & Munson LLP, which specializes in representing tribal interests in Alaska and throughout the United States. She earned her bachelor's degree from the University of Alaska Fairbanks in 1972 and her law degree and master's degree in social work with honors from the University of Denver in 1980. After serving as Alaska Commissioner of Health and Social Services from 1986 to 1990, Ms. Munson joined the Sonosky Law Firm where her practice has emphasized self-determination and self-governance, the Indian Health Care Improvement Act (IHCIA), Medicaid and other third-party reimbursement issues, and other health program operations issues. She was a technical advisor to the IHCIA National Steering Committee for over 10 years; assisted in drafting and editing substantial sections of the reauthorization; and testified before the Senate Committee on Indian Affairs. Ms. Munson is also a member of the National Indian Health Board Medicare & Medicaid Policy Committee, and a technical advisor to the Centers for Medicare and Medicaid Services Tribal Technical Advisory Group. She has been conducting extensive training on the Affordable Care Act and IHCIA since their passage and serves as a consultant to the National Indian Health Board with regard to training on and implementation of these new laws. In 2003, Ms. Munson was given the Denali Award by the Alaska Federation of Natives.



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