

**North Dakota Department of Human Services  
Interim Tribal and State Relations Committee  
Representative Marvin Nelson, Chairman  
September 26, 2016**

Chairman Nelson and members of the Tribal and State Relations Committee, I am Maggie Anderson, Executive Director, of the Department of Human Services (Department). I appear before you to provide information on Medicaid funding for services provided to tribal members.

On February 26, 2016 the Centers for Medicare and Medicaid Services (CMS) issued policy guidance entitled: ***Federal Funding for Services "Received Through" an IHS/Tribal Facility and Furnished to Medicaid-Eligible American Indians and Alaska Natives.***

IHS/Tribal facilities may enter into care coordination agreements with non-IHS/Tribal providers to furnish certain services for their patients who are American Indian (AI)/Alaskan Native (AN) Medicaid beneficiaries, and the amounts paid by the state for services requested by facility practitioners in accordance with those agreements would be eligible for the enhanced federal matching authorized under section 1905(b) of the Social Security Act at a rate of 100 percent.

At a minimum, **care coordination** will involve:

- (1) The IHS/Tribal facility practitioner providing a request for specific services (by electronic or other verifiable means) and relevant information about his or her patient to the non-IHS/Tribal provider;
- (2) The non-IHS/Tribal provider sending information about the care it provides to the patient, including the results of any screening, diagnostic or treatment procedures, to the IHS/Tribal facility practitioner;

- (3) The IHS/Tribal facility practitioner continuing to assume responsibility for the patient's care by assessing the information and taking appropriate action, including, when necessary, furnishing or requesting additional services; and
- (4) The IHS/Tribal facility incorporating the patient's information in the medical record through the Health Information Exchange or other agreed-upon means.

To ensure accountability for program expenditures, in states where IHS/Tribal facilities elect to implement the policy described in this letter, the Medicaid agency will need to establish a process for documenting claims for expenditures for items or services "received through" an IHS/Tribal facility.

The documentation must be sufficient to establish that:

- (1) The item or service was furnished to an AI/AN patient of an IHS/Tribal facility practitioner pursuant to a request for services from the practitioner;
- (2) The requested service was within the scope of a written care coordination agreement under which the IHS/Tribal facility practitioner maintains responsibility for the patient's care;
- (3) The rate of payment is authorized under the state plan and is consistent with the requirements set forth in this letter; and
- (4) There is no duplicate billing by both the facility and the provider for the same service to the same beneficiary.

February 2016 Federal Guidance:

<https://www.medicaid.gov/federal-policy-guidance/downloads/SHO022616.pdf>

I would be happy to address any questions that you may have.

**AGREEMENT BETWEEN THE IHS GREAT PLAINS AREA AND [NAME OF PROVIDER] TO ENTER INTO A CARE COORDINATION ARRANGEMENT AS DESCRIBED IN the Center for Medicaid and CHIP Services' State Health Official Letter 16-002**

**I. Purpose and Summary**

The purpose of this Agreement is to implement written care coordination arrangements in the IHS Great Plains Area. The Agreement identifies the parties to the care coordination arrangement and describes their roles and responsibilities. The parties to the care coordination arrangement described in section V of this Agreement are the [name of PROVIDER] and the Covered IHS Facilities.

This Agreement is between the [name of PROVIDER](hereinafter PROVIDER) and the IHS Great Plains Area. The IHS Great Plains Area has authority to administer and contract on behalf of the Covered IHS Facilities listed in section II of this Agreement. In entering into this Agreement, the IHS Great Plains Area binds the Covered IHS Facilities to the obligations described in this Agreement.

**II. Facilities**

The following facilities (hereinafter Covered IHS Facility) are covered by this Agreement: [IHS to list covered facilities]

**III. Authority**

25 U.S.C. § 1637

**IV. Definitions**

- a. IHS Beneficiary: The term "IHS Beneficiary" means an American Indian or Alaska Native (AI/AN) who is eligible for services from IHS in accordance with 42 C.F.R. 136.12 and is a registered user of the IHS (registered in the IHS Resource and Patient Management System (RPMS)).
- b. Medicaid-Enrolled IHS Beneficiary: The term "Medicaid Enrolled IHS Beneficiary" means an IHS Beneficiary who is enrolled in the South Dakota Medicaid program.
- c. IHS Practitioner: The term "IHS practitioner" means a physician, nurse practitioner, physician assistant or other clinician who is a member of the medical staff of a Covered IHS facility.
- d. Telehealth and Related Technologies: The term "Telehealth and Related Technologies" means the use of electronic information and telecommunications technologies to support long distance clinical health care, patient and professional health-related education, public health, and health administration.
- e. Request for Services: The term "Request for Services" means an order by an IHS practitioner for specified services to diagnose or treat a distinct health condition that includes the time period during which the services are expected to be provided.

**V. Care Coordination Arrangement**

- a. This section describes the elements of a care coordination arrangement under this Agreement. As described in the State Health Official Letter 16-002 (February 26, 2016), the intent of this care coordination arrangement is to ensure that IHS practitioners will remain responsible for a patient's care and be able to coordinate and manage the care furnished to a patient of the IHS

facility upon a Request for Services, so that an individual will receive appropriate care regardless of whether or not the rendering provider is an IHS employee. Care coordination means that the IHS practitioner will be responsible for determining the patient's needs and course of care and for coordinating and managing the patient's care; that all such care, including diagnosis, treatment, and prescriptions, will be recorded in the IHS facility medical records for the patient; and that such records will be available to inform the IHS facility practitioner's ongoing management of the course of care for the IHS facility patient.

- b. An IHS Practitioner must establish a patient-practitioner relationship with the IHS Beneficiary (which includes a Medicaid Enrolled IHS Beneficiary) before submitting a Request for Services to PROVIDER for that patient and maintain that relationship during the provision of care by the PROVIDER. The IHS Practitioner may establish a patient-practitioner relationship with an IHS Beneficiary through Telehealth and Related Technologies.
- c. The IHS Practitioner, may submit a Request for Services to PROVIDER that describes services to diagnose or treat a patient of the IHS practitioner who is an IHS Beneficiary; if the PROVIDER receiving the request is not furnishing all requested services the PROVIDER must promptly notify the IHS practitioner (and may recommend other providers as appropriate). Services furnished by the PROVIDER that are not pursuant to a request for services (or are furnished prior to such a request) are not considered to have been provided pursuant to this agreement.
- d. In the case of a Medicaid-Enrolled IHS Beneficiary, the Request for Services must be within the scope of services that PROVIDER is authorized to furnish and must be covered under the [South Dakota] approved Medicaid Plan. The request may be transmitted electronically or by paper copy, and must include a clear description of the identity of the patient and the specific requested service or, services to diagnose or treat a patient for an identified episode of care. This should also include the date of the request, and any additional medical information necessary for provision of the requested service in accordance with the IHS Practitioner's determination of the patient needs and the course of care. The Covered IHS Facility must maintain documentation of the request; documentation may be electronic or in writing.
- e. In the case of an IHS Beneficiary who is not enrolled in Medicaid, the services provided pursuant to this Agreement must be requested by an IHS Practitioner and be paid for separately, in accordance with Purchased/Referred Care (PRC) program laws and regulations.
- f. Upon accepting a Request for Services on behalf of a patient who is an IHS Beneficiary, PROVIDER will furnish the requested service as soon as feasible after the patient contacts the PROVIDER's practice location.
- g. Within no more than [ ] days of furnishing the specified services for the IHS Beneficiary, PROVIDER will transmit, electronically or in writing, the medical information, test results, and any diagnostic findings and treatment recommendations resulting from the provision of the service to the requesting IHS Practitioner directly or through the IHS care coordinator. Such information must be transmitted more promptly when medically warranted, such as in emergency circumstances. In any such transmission, PROVIDER will specifically identify needs for additional care and treatment, including follow-up care. Upon receiving this transmission, the Covered IHS facility will incorporate the information transmitted into the patient's medical record.

The IHS practitioner will review the medical information, test results, and any diagnostic findings and treatment recommendations received from PROVIDER and take medically appropriate follow-up action as indicated. The Covered IHS Facility may evaluate the quality of professional and administrative services provided by PROVIDER.

**VI. Obligations of PROVIDER**

- a. PROVIDER agrees to enroll in the [South Dakota] Medicaid program, if not already enrolled, and to remain in good standing as a participating provider in such program. If PROVIDER is a group of practitioners, each practitioner in the group who furnishes specified services to a Medicaid-enrolled IHS beneficiary under a care coordination arrangement described in section V of this Agreement must be enrolled and in good standing as a provider in the [South Dakota] Medicaid program.
- b. PROVIDER agrees to carry out and comply with the requirements of the care coordination arrangement set forth in section V of this Agreement.
- c. PROVIDER is responsible for billing for all services furnished, regardless of whether the IHS Beneficiary is enrolled in Medicaid or covered by another alternate resource. For Medicaid claims, the PROVIDER's claim must contain the information specified by the [South Dakota] Medicaid program to document the care coordination arrangement under this Agreement.
- d. PROVIDER shall not condition the provision of services to a Medicaid-Enrolled IHS Beneficiary on a Request for Services from IHS. Nothing in this Agreement shall preclude a Medicaid-Enrolled IHS Beneficiary from receiving care from any qualified Medicaid-enrolled provider who undertakes to furnish such service, and nothing in this agreement shall preclude PROVIDER from furnishing care that is not covered by this agreement.
- e. PROVIDER agrees not to refuse a Request for Services to an individual on the basis that the payment for such service is authorized under PRC, and further agrees to accept applicable PRC payments rates and methodologies for the provision of requested services.
- f. PROVIDER shall maintain malpractice insurance in the form and minimum amount required by the State in which the services are performed, and shall keep and maintain all required records of care, referrals, invoices, and billing documents. Services provided by PROVIDER pursuant to this Agreement are not covered by the Federal Tort Claims Act.
- g. PROVIDER agrees to comply with the General Obligations described in section VIII of this Agreement.

**VII. Obligations of Covered IHS Facility**

- a. Covered IHS Facility agrees to enroll in the [South Dakota] Medicaid program, if not already enrolled, and to remain in good standing as a participating provider in such program.
- b. Covered IHS Facility agrees to carry out and comply with the requirements of the care coordination arrangement set forth in section V of this Agreement.

- c. For non-Medicaid covered services requested by an IHS Practitioner, for which IHS may make payment, Covered IHS Facility will issue a purchase order in advance for the requested service in accordance with Purchased/Referred Care (PRC) program laws and regulations.
- d. Covered IHS Facility agrees to comply with the General Obligations described in section VIII.
- e. Covered IHS Facility will not require a Medicaid-enrolled IHS Beneficiary to receive services from PROVIDER, whether through a care coordination agreement described in section V of this Agreement or otherwise.

**VIII. General Obligations**

- a. On February 26, 2016, CMS issued guidance in State Health Official (SHO) Letter 16-002, on when services are considered to be “received through” an IHS/Tribal facility by a Medicaid beneficiary who is an American Indian or Alaska Native (AI/AN). Medicaid covered services ordered by an IHS Practitioner and furnished by PROVIDER pursuant to this Agreement are considered to be “received through” for purposes of SHO letter 16-002.
- b. Both Parties will comply with all applicable Federal laws and regulations regarding the confidentiality and security of health information.
- c. No transfer of funds is authorized under this Agreement. All payments by IHS for requested services must be made separately, in accordance with applicable PRC program laws and regulations.
- d. Claims submitted to and denied by Medicaid may be eligible for payment under the IHS PRC program. In no event shall a non-payment by Medicaid, however, be construed as a promise to pay for such care under PRC.
- e. This Agreement will remain in effect until terminated. The Agreement may be terminated by either Party by giving 30-day written notice.

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 Director, Great Plains IHS Area Office

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 CEO, [Name of Provider]

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 Date

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 Date