National Indian Health Board

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Submitted via:
tribalgovernmentconsultation@va.gov and consultation@ihs.gov

Dr. Robert Petzel, M.D.
Under Secretary
Department of Veterans Affairs
810 Vermont Avenue
Washington, DC 20420

Dr. Yvette Roubideaux, M.D., M.P.H.
Director
Indian Health Service
Room 448, Reyes Building
801 Thompson Avenue
Rockville, MD 20852

Dear Dr. Petzel and Dr. Roubideaux:

The National Indian Health Board[1] ("NIHB") appreciates this opportunity to file comments in response to the Dear Tribal Leader Letter regarding the Department of Veterans Affairs (VA) and the Indian Health Service (IHS) draft agreement for reimbursement for direct health care services.

Similar to our comments that were submitted to IHS in response to the IHS - VA MOU in 2010, these comments are built upon two fundamental principles. The first is that the United States has special trust responsibilities and legal obligations to American Indians and Alaska Natives (AI/ANs) to ensure their highest possible health status and all resources necessary to effect that policy.[2] The second is that AI/ANs who have chosen to give even more to our Country by serving in the United States Armed Forces should be entitled to receive services consistent with the mission of the VA:

> To provide veterans the world-class benefits and services they have earned – and to do so by adhering to the highest standards of compassion, commitment, excellence, professionalism, integrity, accountability, and stewardship.[3]

[1] Established nearly forty years ago, NIHB is an inter-tribal organization that advocates on behalf of Tribal governments, American Indians and Alaska Natives for the provision of quality health care to all AI/ANs. NIHB is governed by a Board of Directors consisting of representatives from each of the twelve IHS Areas. Each Area Health Board elects a representative to sit on the NIHB Board of Directors. In Areas where there is no Area Health Board, Tribal governments choose a representative. Area representatives communicate policy information and the concerns of the Tribes in their Area to NIHB. Whether Tribes operate their own health care programs through contracts or compacts, or receive health care directly from the IHS, NIHB is their advocate.

[2] Section 3 of the IHCIA, as amended by Sec. 103 of S. 1790.

[3] http://www.va.gov/about_va/mission.asp.

In our view, this mission cannot be fulfilled without facilitating the enrollment of all AI/AN veterans in VA benefit programs for which they are eligible, ensuring them access to health programs that are both culturally competent and knowledgeable about their special health issues as veterans, and ensuring that resources are made available to support access to care.

General Recommendation: Formation of a Tribal Advisory Workgroup. There has been a significant delay in the implementation of Section 405(c) of the Indian Health Care Improvement Act (IHCIA). The VA reimbursement for health care services provided by IHS and Tribal facilities to eligible AI/AN veterans remains a top priority for Tribes ever since the passage of the permanent reauthorization of the IHCIA and the execution of an updated IHS-VA MOU agreement in 2010. For the past two years, Tribes, Tribal organizations and National Indian organizations have requested for the swift implementation of this provision.

The need is too great to delay implementation any further. Per capita, AI/ANs have the highest rate of military service of any ethnic group in the nation, and it is vital that their sacrifice is rewarded with fully coordinated and accessible services. Ultimately, reimbursement could diminish or eliminate the need or desire for duplicative health programs and facilities between IHS and VA. Fully and immediately implementing section 405(c) will not only reduce VA transportation costs and help avoid delays in treatment, but will ultimately create significant efficiencies that will positively affect VA and Indian health providers.

Ultimately, all of the stakeholders, both at the Tribal and federal level, share the same goal: providing the best services to our Native Veterans. With this in mind, the NIHB strongly suggests the formation of a Tribal Advisory Workgroup comprised of Tribal leaders and designated Tribal representatives to advise the VA and the IHS throughout the remainder of the implementation process, and as needed thereafter.

Comments by Section of VA-IHS Draft Agreement Summary

General Issues

Demonstration Projects Need Specific Terms and Conditions. Section 405(c) requires VA to reimburse the IHS, an Indian Tribe or Tribal Organization "where services are provided through the Service, an Indian Tribe or a Tribal organization to beneficiaries eligible for services from [VA], notwithstanding any other provisions of law." This provision does not require a demonstration project, which is typically used as part of an effective public policy tool to garner support for a new policy or program adoption. Section 405(c) sets forth a requirement for reimbursement, and full implementation is expected. In addition, the NIHB has concern over the prospect of demonstration projects as a means of implementing the reimbursement program. Because Tribes and Tribal organizations see this program as a top priority, demand for this program likely exceeds the "limited number of sites" prescribed in the agreement summary. Also, the summary currently lacks criteria for the identification of demonstration sites and duration of demonstration phase. It will be a disservice to allow only a limited number of Tribes and Tribal organizations to proceed while others remain on the sidelines for this long-awaited

opportunity. To mitigate the unintended consequences of this gradual implementation, the NIHB recommends that the agencies define Demonstration Projects by providing an open process for selection of demonstration project sites, as well as clarification on the length of demonstration projects. In the interest of transparency and program development, the NIHB also strongly recommends that the agencies commit to the regular updates of demonstration project results that are shared with Tribes and Tribal organizations.

Reimbursement/Eligibility

Clarification of Eligibility and Assistance with Enrollment in VA Services/Benefits. Without assistance from the VA, assessing the eligible VA health benefits for reimbursement will likely be difficult to make, particularly during the early days of the reimbursement program. In order to effectively implement the reimbursement program, staff at IHS and Tribal facilities will need to be properly trained in identifying eligible AI/AN veterans, the services for which they are eligible and the provided services eligible for reimbursement.

The NIHB requests that the VA provide written materials and training that can be used by AI/AN Veterans and Indian health providers to determine the range of services that VA facilities and programs provide to VA beneficiaries, as well as services that are reimbursable by the VA. This will improve coordination of care and referral from IHS and Tribal health programs to VA programs when the AI/AN veteran chooses the VA system for care or the Indian health system cannot provide the services needed by the AI/AN Veteran. The VA should work with NIHB, Area Indian Health Boards and Tribes to publish simplified eligibility enrollment explanations that are culturally and linguistically tailored to the Tribal member audiences. These pamphlets should clearly identify who is eligible for VA benefits, how eligibility is determined, how an eligible AI/AN veteran can apply for VA benefits, and any applicable appeals process in the event that enrollment is denied. Additionally, the VA should fund outreach and enrollment efforts by Tribes and Tribal health programs willing to carry out such activities on behalf of the VA. This sort of help from Tribes and Tribal health programs will ensure accurate enrollment, as well as greater trust in the new system.

Quality of Care

Emphasize Coordination of Care. The NIHB is supportive of the development of record-sharing between IHS and the VA, as well as a commitment to ensure AI/AN veteran patients receive the highest quality health care services. As these processes are developed, we respectfully remind the agencies that coordination of care is paramount to health care quality. IHS, the VA, and Tribal facilities should have seamless access not only to a patient's medical records, but also to their requirements and preferences for care, including those that are culturally-related.

Areas Still Under Discussion

Expand Reimbursement Coverage to Cover the Contract Health Service (CHS) Program, Emergency Care, and Behavioral Health as Soon as Possible. AI/AN veterans are currently eligible for a wide variety of health care services through VA facilities. Limiting the reimbursement program to direct care would deprive AI/AN veterans of some of these crucially necessary services received outside of an IHS or Tribally-operated facility. The NIHB recommends a swift expansion of the reimbursement program to include other types of VA-sponsored care.

Reconsideration of the VA's Legal Position that Statutory and Regulatory Co-Payment Requirements Cannot be Waived. AI/ANs are not currently subject to co-payment requirements under the IHS system, and it would likely be overly burdensome for IHS and Tribally-operated facilities to collect co-payment from *only* AI/AN veterans. Tribes received a commitment from the federal government for the provision of health care to Indian people into the future, and this federal trust responsibility does not require a co-pay. The NIHB urges reconsideration of the ability to waive co-payments, and requests a written explanation of the basis for the VA's current position. If a legislative remedy were deemed necessary, the NIHB would be a willing partner in its promotion in Congress.

Include Urban Indian Health Organizations as eligible entities. The NIHB concurs with comments submitted by The National Council on Urban Indian Health on this draft agreement on March 29, 2012. We believe the exclusion of these entities to be the result of simple Congressional oversight and look forward to working to correct this issue.

Lastly, please note that the NIHB also agrees with and fully supports the comments submitted by both the National Congress of American Indians and the IHS Tribal Self-Governance Advisory Committee.

Thank you in advance for consideration of these recommendations as we jointly work to advance the health status of American Indian and Alaska Native individuals and communities across the United States.

Yours in Health,

Cathy Abramson
Chairperson
National Indian Health Board