

# National Indian Health Board



March 21, 2024

Denis McDonough  
Secretary  
Department of Veterans Affairs  
810 Vermont Ave. NW  
Washington, DC 20420

***Re: Revised Reimbursement Agreement Template Between the Department of Veterans Affairs and Tribal Health Providers in the Lower 48 States***

Dear Secretary McDonough,

On behalf of the National Indian Health Board (NIHB) and the 574+ federally recognized American Indian and Alaska Native (AI/AN) Tribes we serve, thank you for the opportunity to provide comment on the Department of Veterans Affairs (VA) draft Agreement between the VA and Tribal Health Providers (THPs) for reimbursement for health care and related services provided by a THP to eligible American Indian and Alaska Native (AI/AN) veterans. The progress made in this most recent draft of the Lower 48 Reimbursement Agreement reflects over two years of collaboration and feedback gathered by the VA during several listening sessions, engagements with Tribal leaders and Indian Organizations, and meetings with the IHS.

NIHB is a 501(c)3, not-for-profit, national Tribal organization founded by the Tribes in 1972 to serve as the unified, national voice for AI/AN health. Our Board of Directors is comprised of distinguished and highly respected Tribal leaders whom the Tribes elect in each of the twelve Indian Health Service (IHS) regions. Since 1972, NIHB has advised the U.S. Congress, IHS, and other federal agencies under the U.S. Department of Health and Human Services (HHS) about health disparities and service issues experienced in Indian Country. These disparities are exacerbated by pervasive inaccessibility of health services, chronic underfunding of the Indian health system, and high provider shortages within IHS, Tribal, and urban Indian (I/T/U) clinics and hospitals. As a result, AI/AN communities face higher disease morbidity and mortality rates and lower life expectancy and quality of life.

It is imperative that the VA quickly incorporate the recommendations below as this Agreement will ensure that AI/AN veterans receive the culturally competent care that their dedicated service has entitled them to. The agreement and recommended changes will also ensure that THPs receive adequate reimbursement for services provided. Since initiating the current reimbursement agreement in 2012, the VA reimbursed IHS and THPs over \$186 million for direct care provided to AI/AN veterans. In 2022, the Agreement expanded to include Urban Indian Organizations (UIO). The VA currently utilizes Agreements with 74 IHS facilities, 119 THPs, and 1 UIO facility.<sup>1</sup> We thank you for your continued collaboration and openness towards ensuring the VA upholds the trust responsibility.

---

<sup>1</sup> See VA Veteran Population Projection Model, (2018): [https://www.va.gov/vetdata/veteran\\_population.asp](https://www.va.gov/vetdata/veteran_population.asp).



50 F Street, NW | Suite 600 | Washington, DC 20001 | 202-507-4070 |  
[www.nihb.org](http://www.nihb.org)

*The Red Feather of Hope and Healing*

In advancement of national Tribal priorities, we make the following comments, requests, and recommendations in response to the February 21, 2024, request for comments on the draft Agreement with further explanation below:

1. Follow the calls of Tribal leaders to utilize the IHS' all-inclusive rate for outpatient pharmacy reimbursement;
2. Incorporate traditional healing services into the scope of reimbursable services;
3. Clarify language regarding alternative reimbursement agreements;
4. Extend electronic billing for pharmacy benefits to all THPs;
5. Add preauthorization language into this agreement; and
6. Host a Tribal consultation before issuing a proposed final agreement.

### **AI/AN Veterans and the Trust Responsibility**

AI/ANs have served in the United States military in every major armed conflict in the Nation's history and have traditionally served at a higher rate than any other ethnic group in the United States.<sup>2</sup> This includes at least 9,000 Native American men who served the United States in World War One, before this country granted universal citizenship to American Indians and who suffered a casualty rate five times higher than the total force; 42,000 AI/ANs who served in the Vietnam War, representing twenty-five percent of the entire AI/AN population at the time; and over 33,000 AI/ANs who have served following September 11, 2001.<sup>3</sup> Today, more than 145,000 AI/AN veterans live in the United States.<sup>4</sup>

In return for their military service, the United States promised all veterans, including Native veterans, "exceptional health care that improves their health and well-being."<sup>5</sup> The federal government's responsibility to provide exceptional health care to Native veterans extends beyond that owed to them in return for their military service. The United States also has a well-established trust responsibility to "maintain and improve the health of the Indians."<sup>6</sup>

### **Clarify Language Regarding Alternative Agreements**

As currently drafted under proposed section VI.A, the agreement references "different" agreements between the VA and THPs. As THPs understand the agreement, the VA-THP Reimbursement Agreement shall be the only reimbursement agreement between Tribes and the VA for services provided to eligible AI/ANs. The Department must clarify what "different" agreements mean and the intent of including such language within the current draft. We must be clear that Tribes do not agree to be reimbursed at lower rates than those provided for in the VA-THP Reimbursement Agreement. Tribes will not sign any VA-THP Reimbursement Agreement which makes its provisions subordinate to any other reimbursement agreements.

---

<sup>2</sup> See Proclamation on National Native American Heritage Month, 86 C.F.R. § 60545 (2021), available at <https://www.whitehouse.gov/briefingroom/presidential-actions/2021/10/29/a-proclamation-on-national-native-american-heritage-month-2021/>.

<sup>3</sup> See U.S. Department of Veterans Affairs, American Indian and Alaska Native Veterans, 2017 27-28 (May 2020), <https://www.va.gov/vetdata/docs/SpecialReports/AIAN.pdf>; Tanya Thatcher, James Ring Adams & Anne Bolen, Patriot Nations: Native Americans in Our Nation's Armed Forces, 17 American Indian Magazine 3 (2016), <https://www.americanindianmagazine.org/story/patriotnations-native-americans-our-nations-armed-forces>.

<sup>4</sup> See VA Veteran Population Projection Model, (2018): [https://www.va.gov/vetdata/veteran\\_population.asp](https://www.va.gov/vetdata/veteran_population.asp).

<sup>5</sup> Veterans Health Administration, About VHA, <https://www.va.gov/health/aboutVHA.asp>.

<sup>6</sup> 25 U.S.C. § 1601(1).

Our AI/AN veterans are owed a duty of care by the US Government which honors and respects their service and the trust and treaty obligations to Tribes and their citizens. We strongly recommend that the VA remove the language from the draft agreement at section VI.A which reads, “or care referred to the THP under a different agreement with VA.”

### **Include Traditional Healing and Medicine as a Reimbursable Service**

The VA must include traditional healing practices as a reimbursable service in this Agreement. Tribes have each developed, refined, and stewarded their unique knowledge bases since time immemorial. Thus, AI/AN constructions of well-being and healing practices are imbued with an inherent sovereignty. AI/AN veteran access to traditional healing practices provides more than culturally appropriate health care. Providing traditional healing services protects the right of AI/AN veterans to care for their health in its whole, traditional breadth. The United States owes a special duty of care to Tribal nations, which animates and shapes every aspect of the federal government’s duty to our veterans. The VA’s approval of these services will help fulfill the federal trust responsibility and honor Tribal sovereignty.

There are already highly successful Tribally-supported health programs implementing traditional healing practices in behavioral health, maternal health, and diabetes prevention, among many others. Including traditional healing will enhance the ability of THPs to deliver culturally appropriate healthcare that is responsive to the needs of AI/AN veterans across Indian Country. The VA itself uplifts the efficacy and positive impact of traditional healing programs on the lives of Native veterans in its recent publication of Philip Morales’ story, “Native American Veteran shares his story of recovery and healing.”<sup>7</sup> Morales was able to access substance use recovery services at Phoenix VA provided by a Navajo traditional healer and remarked on his experience, “VA helped me get stable in my mind and my heart, and I was able to get back into our culture.”

The VA's Advisory Committee on Tribal and Indian Affairs' (ACTIA) 2022 recommendations included championing the use of traditional healing to promote the well-being of AI/AN veterans by October 2024. The VA responded, stating it looks forward to supporting traditional healing to align with the VHA's Whole Health System of Care. Including traditional healing practices as a reimbursable service would be a meaningful step to honoring and achieving this recommendation.

### **Utilize IHS’ All-Inclusive Rate for Outpatient Pharmacy Reimbursement**

The Agreement must reimburse THPs for outpatient pharmacy services at the IHS All Inclusive Rate (AIR), also known as the Office of Management and Budget (OMB) Encounter Rate. Most state-operated Medicaid programs reimburse IHS using the OMB rate, and those programs that do not currently utilize it are quickly transitioning to the OMB rate. The OMB rate is a cost-based rate, annually revised to reflect the actual healthcare delivery costs in clinics and hospitals across Indian Country.

Across multiple drafts, the VA has not heeded the calls of Tribal leaders to utilize the OMB rate. Tribal leaders are united in calling for this Agreement to adopt the AIR. During the VA’s June 26, 2023, Listening Session in Tulsa, OK, we expressed concerns over reimbursement rates for outpatient pharmaceutical benefits and mirrored those in our July 20, 2023, letter. Further, we reiterated these concerns to Deputy Assistant Secretary for Health for Integrated Veterans Care Hillary Peabody during the second quarter IHS Tribal Self-Governance Advisory Committee (TSGAC) meeting on February 22, 2024, in Washington, DC. To use a rate below the OMB rate is to under-reimburse for the delivery of services at Tribal facilities.

---

<sup>7</sup> See Native American Veteran shares his story of recovery and healing, (2023), available at <https://news.va.gov/126579/native-american-veteran-shares-story-recovery/>

### **Develop Electronic Billing for Pharmacy Reimbursement**

There are concerns over the VA's use of paper claims for pharmacy reimbursement from the VA to THPs. The added difficulty of processing and recording accurate payments based on paper invoices will delay payment from the VA to THPs. While the VA's transition from paper to electronic billing for pharmacy benefits may lay outside of the Reimbursement Agreement's scope, it is imperative that the VA immediately address its lack of an electronic system. It is our understanding that the VA and THPs in the Alaska IHS Service Area utilize an electronic claims system. In the spirit of respect and equality, the VA should expand this to THPs across the lower 48 states.

### **Clarify Preauthorization Language for Pharmacy Benefits**

Additional clarification is needed regarding preauthorization for reimbursable services under this Agreement. Specifically, the VA must include a provision in this Agreement stating that it will not require preauthorization for any reimbursable services listed in Section V of the Agreement between the VA and THPs. The absence of a provision stating that the VA will not utilize preauthorization for services delivered by a THP is concerning since preauthorization threatens the continuity of care and the sovereignty of Tribes and THPs. Tribes have the sovereign right to provide for the health and well-being of their people, which includes determining what healthcare services are necessary for their community to achieve optimal health. Tribes know and understand their community and have provided for their people for millennia. Preauthorization for health care services undermines this sovereign right, perpetuates colonial practices, and will ultimately lead to delays in services and perpetually poor health outcomes.

Additionally, the lack of this provision is concerning since other recently negotiated agreements include a similar provision. In the December 6, 2023, Revised Agreement between the VA Veterans Health Administration and the Department of Health and Human Services IHS, the Agreement explicitly states that preauthorization by the VA is "not required for any of the reimbursable services within the scope of this Agreement."<sup>8</sup> Tribal leaders have consistently expressed concerns over preauthorization. Given the VA's previous comments on the importance of aligning all three reimbursement agreements in scope and heart, the lack of this provision is unacceptable.<sup>9</sup>

### **The VA Must Host a Consultation Before Issuing a Proposed Final Agreement**

The must VA host a consultation on the next draft Agreement or before issuing a proposed final Agreement, as required per Executive Order 13175<sup>10</sup> and President Biden's November 30, 2022, Memorandum on Uniform Standards for Tribal Consultation.<sup>11</sup> Tribal consultation remains vital to upholding the federal government's trust responsibility and is one of the primary means of

---

<sup>8</sup> See Revised Agreement between the Department of Veterans Affairs Veterans Health Administration and the Department of Health and Human Services Indian Health Service for Reimbursement for Health Care & Related Services (Dec. 6, 2023):

[https://www.ihs.gov/sites/newsroom/themes/responsive2017/display\\_objects/documents/2023\\_Letters/Enclosure\\_D TLL\\_DUIOLL\\_120723.pdf](https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/2023_Letters/Enclosure_D TLL_DUIOLL_120723.pdf)

<sup>9</sup> At the June 26, 2023 Listening Session, Hillary Peabody, Deputy Assistant Under Secretary for Health for Integrated Veterans Care, stated that the VA intends for all three reimbursement agreements to be similar in scope.

<sup>10</sup> E.O. 13175 of Nov 6, 2000

<sup>11</sup> See Presidential Memorandum on Uniform Standards for Tribal Consultation (Nov. 30, 2022):

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/>

respecting and actively demonstrating the sovereignty of Tribes and Tribal Nations. The federal Trust responsibility establishes a clear relationship between Tribes and the federal government; at the core of that is ensuring the health and welfare of AI/AN veterans.

**Conclusion**

Thank you for the opportunity to provide feedback and recommendations on the current draft of the Agreement. We are encouraged by the VA's revisions represented in this Agreement, and we look forward to the VA incorporating further changes recommended by Tribes and Tribal organizations. In summary, before the VA finalizes the agreement between itself and THPs, it must:

1. Utilize IHS' All-Inclusive Rate for outpatient pharmacy reimbursement,
2. Include traditional healing and medicine as a reimbursable service;
3. Clarify language regarding alternative agreements;
4. Develop electronic billing for pharmacy reimbursements;
5. Clarify preauthorization language for pharmacy benefits; and
6. Host a Tribal consultation before issuing a proposed final agreement.

If you or your staff have questions or need assistance during the revision process, please contact A.C. Locklear, Federal Relations Director, at [alocklear@nihb.org](mailto:alocklear@nihb.org). We look forward to continued collaboration between Tribes, Tribal organizations, and the VA during the revision process.

Sincerely,

A handwritten signature in black ink, appearing to read "William Smith". The signature is fluid and cursive, with the first name "William" and last name "Smith" clearly distinguishable.

William Smith, *Valdez Native Tribe*  
Chairman and Alaska Area Representative  
The National Indian Health Board

CC: Hillary Peabody, Deputy Assistant Under Secretary for Health for Integrated Veteran Care  
Clay Ward, Acting Director, Office of Tribal Government Relations, US Department of Veterans Affairs