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(503) 228-8182
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MEMORANDUM

Date: May 1, 1997

To: Tribal Health Directors

From: Ed Fox, Policy Analyst

Re: NPAIHB Comment Letter on IHS/Health Care Financing Administration (HCFA) Memorandum of Agreement.

Enclosed you will find the NPAIHB's draft letter of response to the April 24, 1997 version of the HCFA guidance letter to state Medicaid Directors. On May 6, 1997 there will be a conference call meeting that will, hopefully, bring to a close the discussion of what to include in the letter to Medicaid Directors regarding how to implement the IHS/HCFA MOA. Please contact me if you have any comments or suggestions before the HCFA letter is finalized.

I've enclosed the HCFA letter and the tribal/IHS version of the letter that are referenced in our letter to Zeita Cobb/HCFA.

(Enclosures)

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May 1, 1997

Zeita Cobb
Medicaid Bureau
Health Care Financing Administration
7500 Security Blvd.
Baltimore, MD 21244-1850

Dear Ms. Cobb,

The Northwest Portland Area Indian Health Board (NPAIHB) is writing to comment on the April 24, 1997 draft of the guidance letter to state Medicaid directors regarding the implementation of the Indian Health Service(IHS)/ Health Care Financing Administration(HCFA) Memorandum of Agreement of December 19, 1997. This latest HCFA version of the letter is an improvement from an earlier HCFA draft, but its definition of an encounter contrasts sharply with a version written by tribal and IHS representatives. It offers a definition of covered services that NPAIHB believes Northwest tribes will accept. However, as we pointed out on the April 24, 1997 conference call, Northwest tribes require several changes to the final draft of the letter.

First, the wording in the final letter needs to make it clear in every instance that an encounter need not take place in an Indian program facility to be eligible for payment at the encounter rate. Rather, as we have repeatedly pointed out, an encounter occurs if it is a billable Medicaid service authorized and delivered by an Indian health program (IHS or tribal). This meaning can be obtained by changing the word(s) found in the last paragraph of page one from "in an IHS or 638 facility(ies)" to "through an Indian health program." Our Board could accept other language that accomplishes the same effect.

Second, the last sentence of the first paragraph on page 2 of the HCFA letter covers too much in a single sentence. Ending the sentence after the word reimbursement is recommended since it is not clear why HCFA wants to tie a unique IHS-HCFA payment mechanism to any and all future methodologies for non-IHS providers.

Third, the HCFA definition of an encounter has ignored the wording that is contained in the IHS/tribal letter which our Board feels captures the agreed meaning of an encounter. Northwest tribes feel that the first five numbered paragraphs in the IHS/tribal letter include what an encounter definition should contain. We believe state Medicaid directors would agree with Rick Arnold of the State of Washington's Medicaid Program that our version is clearer than the HCFA version. If HCFA is unwilling to adopt the tribal/IHS version, the NPAIHB would like to offer the following revisions to the HCFA letter to eliminate redundancies and make the definition clearer without changing the policy that underlies the MOA.

Paragraph numbered "1" does not include a clause referencing a key determinant of an encounter. It should include reference to a single diagnosis as was included in paragraph numbered "1" in the IHS/tribal version of this letter.

Paragraph numbered "2" needs to add the clause "for a single diagnosis," so states don't refuse payment if a physician sees a patient for different diagnosis on the same day.

Paragraph numbered "3" should be revised to address the issue of referral to another health care provider-discipline within a 24 hour period. The Board suggests a new #3: *Referrals to different primary care provider-disciplines in the same Indian health program within the same 24 hour period constitutes more than one encounter.*

Paragraph numbered "4" simply restates the point that an encounter is subject to the '24-hour' rule, i.e., a second visit for the same diagnosis is only one encounter when it falls within a 24-hour calendar day. It could be eliminated.

Paragraph numbered "5" isn't really necessary since an encounter is linked to a diagnosis. More than one diagnosis results in more than one encounter. If the HCFA paragraph numbered "1" is revised as recommended this paragraph can be eliminated unless it is expected to clarify Medicaid Directors' understanding.

Paragraph numbered "6" seems to undermine the goal of cost based-reimbursement and it is perhaps unnecessary. NPAIHB's view is that if a particular state reimburses for a particular service (Medical, dental, mental health etc.) then each such visit to a primary care discipline should be an encounter. We think our proposed paragraph "3" above, if adopted, would eliminate the need for paragraph "6".

Our comments are offered to bring closure to the process of writing this letter of guidance to State Medicaid Directors without either expansion or contraction of the understandings that informed the Memorandum of Agreement.

Sincerely,

Julia Davis
Chair, Northwest Portland Area Indian Health Board

HCFA Version

DRAFT DRAFT DRAFT DRAFT DRAFT DRAFT DRAFT DRAFT

Dear State Medicaid Director:

On December 19, 1996, the Director of the Indian Health Service (IHS) and the Administrator of the Health Care Financing Administration (HCFA) signed a Memorandum of Agreement (MOA). The purpose of this agreement was to establish the roles and responsibilities of HCFA and IHS in implementing a change in payment policy for Medicaid services provided on or after July 11, 1996 to American Indian and Alaska Native (AI/AN) individuals through health care facilities owned and operated by AI/AN tribes and tribal organizations. The health care facilities are organizations with funding authorized by Title I or III of the Indian Self-Determination and Education Assistance Act (Public Law 93-638) as amended. The facilities are known as "638s."

In order to advance implementation of this MOA, a workgroup has been organized in recognition of operational issues needing resolution. The workgroup, comprised of Federal, State, and Tribal staff, is developing written guidance for implementation of the MOA.

One such operational issue of concern is the need for a definition of an encounter, where reimbursement is based on a flat rate per outpatient service occurrence. In response, HCFA, in consultation with the entities and agencies affected, developed guidelines and a definition of an encounter which correlates to the Medicaid outpatient per visit reimbursement rates paid to (1) IHS-owned and operated health care facilities; (2) IHS-owned facilities operated by AI/AN tribes or tribal organizations under 638 agreements; and (3) facilities owned and operated by tribes or tribal organizations operating under 638 agreements.

An encounter is defined as "any State Plan defined outpatient and/or rural health clinic facility service(s) provided within a twenty-four hour period, ending at Midnight, to a Medicaid eligible beneficiary in an IHS or 638 facility(ies) as defined in the MOA on payment to tribal organizations for medical services to American Indians and Alaska Natives." It is "a documented face-to-face visit between the Medicaid eligible AI/AN beneficiary and a qualified health care professional during which the outpatient or rural health clinic service is provided."

This encounter definition is associated with an "encounter rate" which is an amount paid to providers consistent with the definition and meant to encompass outpatient services as defined in the Federal regulations at 42 CFR 440.20. Within this framework, states have the flexibility to reasonably define those services covered. Under current procedures, this encounter rate is negotiated annually between IHS and HCFA. Both agencies have been working together to revise the rates to allow for cost-based reimbursement, thereby allowing for reimbursement to these facilities in accordance with State Plan methodology for non-IHS providers.

HCFA recommends that the following guidelines be incorporated in the definition of encounter for which an outpatient visit is paid:

1. An outpatient visit between a Medicaid AI/AN beneficiary and more than one health care professional within the same 24-hour period constitutes a single encounter.

2. More than one outpatient visit with the same health care professional within a 24-hour period constitutes a single encounter.

3. Referrals to specialists or to another facility, regardless of location, are part of the original encounter when occurring within the same 24-hour period. The outpatient visit and the referral(s), therefore, constitute a single encounter.

4. Referrals to specialists or to another facility, regardless of location, are **not** part of the original encounter when occurring outside the 24-hour period. Separate or multiple encounters may be claimed in these cases.

5. An exception to the above single encounter claims would occur in those cases wherein the patient, subsequent to the first encounter or visit, suffers an illness or injury that requires an additional diagnosis and treatment within the same 24-hour period. Each additional occurrence would be treated as separate encounters.

6. Claims involving a beneficiary who receives multiple (more than one) covered service within the same 24-hour period (for example a patient who sees a

physician, a dentist, and has a prescription refilled), may be billed in one of two ways:

a. at the outpatient per visit rate as one encounter (100 percent FMAP), or

b. as a breakdown of services claimed in individual categories and billed as those services for non-IHS providers in the state are billed.

In order for states to receive Medicaid reimbursement for IHS outpatient encounter claims, states should (1) define IHS outpatient services covered under the encounter rate in accordance with the State Plan for Medical Assistance; and (2) obtain claims data sufficient to indicate the outpatient services covered under the State Plan have been provided to Medicaid eligible AI/AN beneficiaries in an IHS or 638 facility.

This definition and the ensuing guidelines should help to eliminate confusion about what constitutes an outpatient encounter and who is eligible to receive outpatient per visit services provided by IHS facilities. We ask that this information be disseminated to all regions, states and tribal organizations concerned with this issue. Questions regarding outpatient encounters at IHS and 638 facilities should be addressed to your HCFA/IHS Regional Office Representative.

Sincerely,

Judith D. Moore
Acting Director
Medicaid Bureau

IHS-Tribal Version

DRAFT DRAFT DRAFT DRAFT

Dear State Medicaid Director:

On December 19, 1996, the Director of the Indian Health Service (IHS) and Administrator of the Health Care Financing Administration (HCFA) signed a Memorandum of Agreement (MOA) between the two agencies. The purpose of this agreement was to establish the roles and responsibilities of IHS and HCFA in implementing a change in payment policy *to extend 100% Federal medical assistance percentage* for Medicaid services provided on or after July 11, 1996 to American Indian and Alaska Native (AI/AN) individuals through health care facilities leased or owned and operated by AI/AN tribes and tribal organizations. These health care facilities are organizations with funding authorized by Title I or III of the Indian Self Determination and Education Assistance Act (Public Law 93-638) as amended. They are known as "638s."

In order to advance implementation of this MOA, a workgroup was organized in recognition of operational issues needing resolution The workgroup, comprised of Federal, State, and tribal staff, is developing written guidance for implementation of the MOA.

One such operational concern is the need for a clear definition of an encounter where reimbursement is based on a flat rate per outpatient service occurrence *A workgroup, consisting of Federal, State, and tribal staff, was established to develop a definition of encounter.* This encounter definition is associated with an *"all inclusive rate"* which is an amount paid *to the IHS facilities and those tribes who might elect, pursuant to the terms of the MOA, to be an "IHS-type" provider and would include the following facilities:* (1) IHS-owned/leased and operated health care facilities; (2) IHS-owned/leased facilities operated by AI/AN tribes or tribal organizations under 638 agreements; and (3) facilities owned/leased and operated by tribes or tribal organizations operating under 638 agreements. Under current procedures, this *all inclusive rate* is negotiated annually between IHS and HCFA *and subsequently published in the Federal Register.* Both agencies have been working cooperatively to revise the rates to allow for cost-based reimbursement, thereby allowing for reimbursement to these facilities consistent with State Plan methodology for non-IHS providers.

The workgroup has recommended that *the IHS facilities and those 638 facilities that have opted to be "IHS-type" providers for purposes of the MOA, will be reimbursed at the all inclusive rate for those encounters, as described below, where title XIX services, as defined in 42 CFR Part 440, Subpart A, are provided to AI/AN Medicaid beneficiaries.*

The definition of encounter that was developed by the workgroup is as follows:

A face to face contact between a health care professional and an IHS beneficiary eligible for Medicaid for the provision of title XIX defined services in an IHS or 638 facility(ies) within a 24 hour period ending at midnight, as documented in the patient's medical record.

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL # of pages ▸ 3

To Ed Fox	From Kathy Mayo
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NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

The following is additional guidance regarding the encounter definition and related issues:

1. An outpatient contact between a Medicaid beneficiary and more than one health care professional *in a single IHS or Tribal facility*, within the same 24-hour period, *and the services provided are a result of the same diagnosis*, constitutes a single encounter.

2. More than one outpatient contact with the same health care professional within a 24-hour period, *and the services provided are a result of the same diagnosis*, constitutes a single encounter.

3 Referrals to specialists in the same or another facility *constitute more than one encounter when the patient receives evaluation and/or specialized treatment for the same diagnosis on the same date of service.*

4. An outpatient contact between a Medicaid beneficiary and more than one health care provider within the same 24 hour period, and the services provided are a result of a different diagnosis, constitutes more than one encounter.

5. More than one outpatient visit with the same health care provider within the same 24 hour period, and the services provided are a result of a different diagnosis, constitutes more than one encounter.

6. Those services negotiated between the IHS or 638 facilities and the States not to be included under the encounter definition will be reimbursed in accordance with the State Plan methodology, i.e., FFS, FQHC, RHC, etc.

7. Services provided to non-Indian Medicaid beneficiaries may be reimbursed at the all-inclusive rate and at a minimum, should be reimbursed at full actual costs.

8 The above guidance is not intended to limit the provision and reimbursement for additional optional services and/or unique State specific program, e.g., establishing a telemedicine program.

This definition should help to eliminate confusion about what an outpatient encounter. This MOA presents a unique opportunity for Federal, State and tribal partnership for improving the health care delivery system to AI/ANs. Please distribute this information to appropriate offices. Any questions concerning outpatient encounters at IHS or 638 facilities should be directed to HCFA's Regional Office State Representatives.

Sincerely,