



What's the Violation?:

10 Key Federal and State Legal Protections for AI/AN Patients and Indian Health Care Providers

The American Indian Health Commission

www.aihc-wa.com

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About Us

American Indian Health Commission

Pulling Together for Wellness

We are a Tribally-driven, non-profit organization providing a forum for the twenty-nine Tribal governments and two urban Indian health programs in Washington State to work together to improve health outcomes for American Indians and Alaska Natives.



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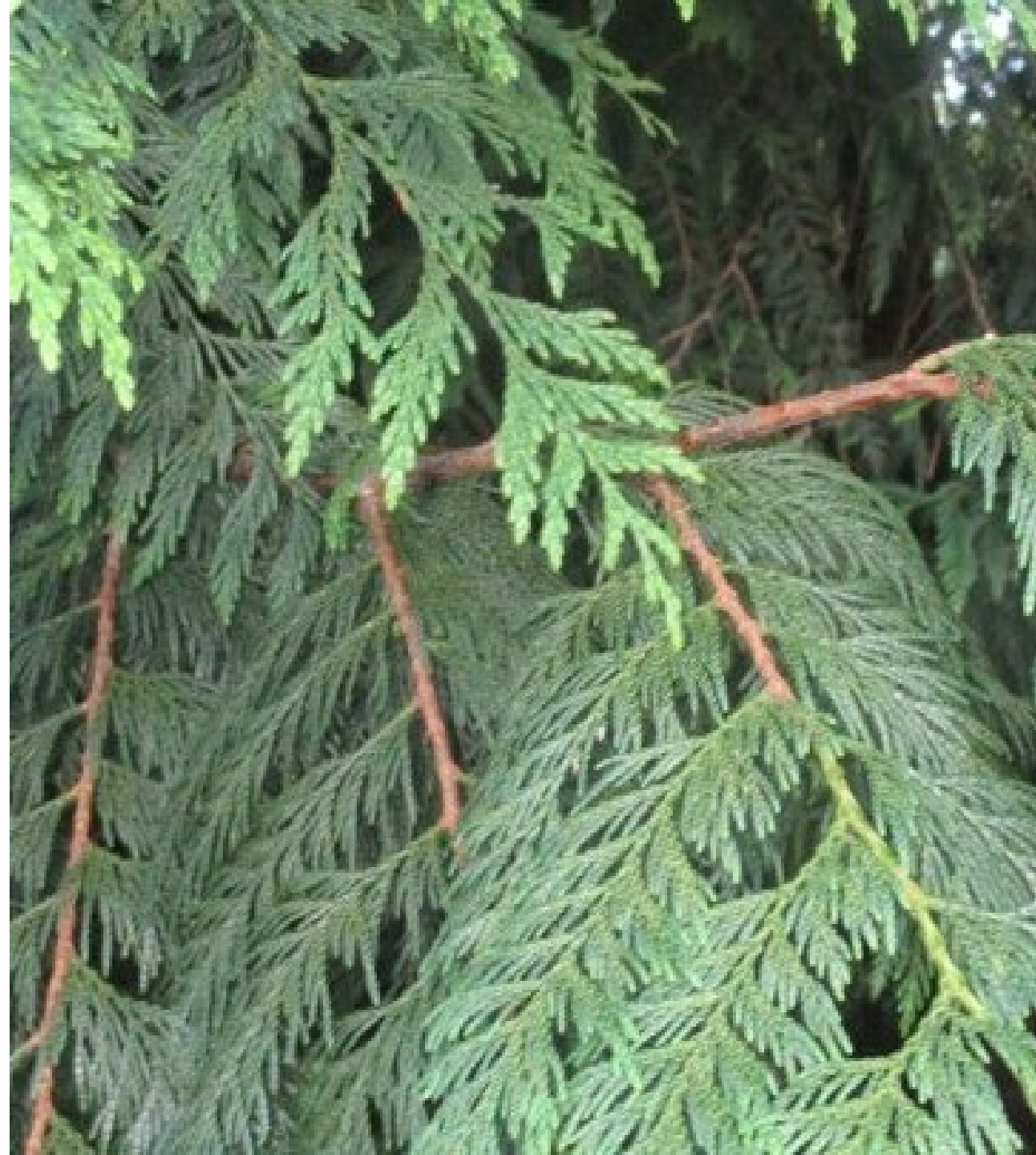
Today's Purpose

- The State of Washington requires health insurance issuers (managed care organizations, qualified health plans, Medicare, private issuers) to comply with all state and federal laws relating to the acts and practices of health insurance issuers and laws relating to health plan benefits.
- The purpose of this session is to review federal and state legal protections for American Indians/Alaska Natives (AI/AN) patients and Indian health care providers(IHCPs).



Overview

1. 10 Key Rules
2. Game Time
3. What Happens When These Rules Are Not Followed?
4. OIC Enforcement





10 Key Rules

10 Key Federal and State Legal Protections
for AI/AN Patients and Indian Health Care Providers



10 Key Rules

with Federal/State Legal Protections for AI/AN and IHCPs

1. Contracts Not Required
2. Access
3. Cost of Services
4. IHCP Reimbursement
5. Licensure and Credentialing
6. Payer of Last Resort
7. Discrimination Exemption
8. Insurance and Indemnification
9. IHCP Records Confidentiality
10. QHP AI/AN Enrollment Periods



NOTE

Health Insurance Companies in this presentation may be referred to as

- Health insurance carriers; or
- Health insurance issuers

WA state law uses both terms carrier and issuer interchangeably



Who Do these Rules Apply to?

Health Carriers

- Managed Care Organizations (MCOs)
- Qualified Health Plans (QHPs)
- Medicare
- Private issuers



IMPORTANT DOC!!

Federal and State Legal Protections for American Indian/Alaska Native Enrollees and Indian Health Care Providers

Available at www.insurance.wa.gov/sites/default/files/documents/issuer-requirements-ai-an-ihcp_0.pdf



American Indian Health Commission

Federal and State Legal Protections for American Indian/Alaska Native Enrollees and Indian Health Care Providers

Requirements for Health Insurance Issuers

Last Updated: 8/26/24

The State of Washington requires health insurance issuers (hereinafter “issuers”) to comply with all state and federal laws relating to the acts and practices of issuers and laws relating to health plan benefits.¹ The purpose of this reference document is to assist issuers in complying with federal and state protections for American Indian/Alaska Native (AI/AN) enrollees and Indian health care providers, by consolidating the applicable state and federal statutes and rules in one place. Issuers, as referred to in this guidance, include entities defined as carriers under RCW 48.43.005 that are regulated by the Washington State Office of the Insurance Commissioner (OIC) and include issuers that offer qualified health plans (QHPs). This document will identify protections that apply to all issuers and those that may apply only to QHPs. This document does not address Medicaid or Medicare managed care organizations.

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Rule #1: Contracts Not Required

All Issuers. Indian health care providers (IHCPs) are not required to contract with health insurance issuers (issuers) to be reimbursed or for an AI/AN to have access to an IHCP.

[25 U.S.C. § 1621e\(c\); WAC 284-170-200\(9\).](#)



Rule #2: Access

A. All issuers. Issuers must ensure that AI/AN enrollees have access IHCPs for medical and behavioral health services. [WAC 284-170-200\(9\)](#).

B. Qualified Health Plans(QHPS). QHPs must include essential community providers (ECP), including IHCPs, in their networks for QHPs and qualified stand-alone dental plans. The issuer's QHP provider network must include access to 100% of IHCPs in its service area. [WAC 284-170-310\(1\) and 3\(b\)](#); [45 C.F.R. § 156.235\(a\)](#); and [WAC 284-170-200\(9\)](#).



Rule #3: Cost of Services

- A. All Issuers.** All issuers must ensure that all AI/AN enrollees can obtain medical and behavioral health services from an IHCP “at no greater cost to the enrollee than if the service were obtained from network providers and facilities.” [WAC 284-170-200\(9\)](#).
- B. Qualified Health Plans.** The issuer of a zero or limited cost sharing plan shall eliminate any cost-sharing under the plan for an AI/AN enrollee for items or services provided directly by the IHCP or through referral under purchase and referred care. [42 U.S.C. § 18071\(d\)\(2\)](#).



Rule #4: IHCP Reimbursement

A. Right of Recovery Rule. All issuers must reimburse IHCPs for services they provide the “reasonable charges billed” or, if greater, the “highest amount” the issuer would pay for care and services furnished by nongovernmental providers. [25 U.S.C. § 1621e\(a\)](#).

B. QHP-No Reduction in Payment. QHPs shall not reduce the payment to an IHCP by the amount of any cost-sharing that would be due from the AI/AN but for requirement under 42 U.S.C. § 18071(d)(2) that no cost sharing under the plan shall be imposed under the plan for such item or service. [ACA § 1402\(d\)\(2\)\(B\) \(codified at 42 U.S.C. § 18071\(d\)\(2\)\)](#).



Rule #5: Licensure and Credentialing

A. Licensure of IHCP Professionals. IHCP's employed health professionals are exempt from Washington State licensure requirements if the professionals are licensed in another state and are performing the services described in the contract or compact of the Indian health program under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.). [25 U.S.C. § 1621t.](#)

B. Credentialing. Issuers are not responsible for credentialing providers and facilities that are part of the Indian health system.
[WAC 284-170-200\(9\).](#)



Rule 6: Payer of Last Resort

IHCPs shall be the payer of last resort for services provided to eligible individuals. All alternate resources (Medicare, Medicaid, SCHIP, private insurance, etc.) that are available and accessible must be used before an IHCP's funds can be expended. [25 U.S.C. § 1623\(b\)](#).



Rule 7: Discrimination Exemption

Issuers cannot require an IHCP to serve individuals who are ineligible for services from an IHCP. IHCPs are established under federal law to serve their AI/AN community and/or other populations (including non-Indians). An individual shall not be deemed as subjected to discrimination by reason of their exclusion from benefits limited by federal law to individuals eligible for services from an IHCP. [45 C.F.R. § 80.3\(d\)](#).



Rule 8: Insurance and Indemnification

A. Liability Insurance. IHCPs shall not be required to obtain or maintain professional liability insurance to the extent the IHCP is covered by the Federal Tort Claims Act. [Model Medicaid and Children's Health Insurance Program \(CHIP\) Managed Care Addendum for Indian Health Care Providers \(IHCPs\); 28 U.S.C. §§ 2671-2680](#)

B. Indemnification/Liability. IHCPs shall not be required to provide indemnification or guarantee that the health issuer will be held harmless from liability. [Model Washington State Indian Health Care Provider Addendum; 28 U.S.C. §§ 2671-2680.](#)



Rule 9: IHCP Records Confidentiality

All medical quality assurance records created by or for an IHCP as part of a medical quality assurance program are confidential and privileged and may not be disclosed to any person or entity except under certain statutory exceptions. To the extent an issuer imposes any medical quality assurance requirements on an IHCP, any such requirements applicable to the IHCP shall be subject to this law.

25 U.S.C. § 1675(b).



Rule 10: QHP AI/AN Enrollment Periods

QHP issuers must allow an AI/AN to enroll or change plans in Washington Healthplanfinder at any point during the year but not more than once a month. [45 C.F.R. § 155.420\(d\)\(8\)](#).



Game Time!



Game Time!

1. Spot the Issues
2. What's the Violation(s)?
3. Which Law/Regulation Applies?

Scenario 1

Small Village Tribal Health Clinic makes a purchase and referred care referral for their patient Jackie to Tranquility, an inpatient substance use disorder (SUD) treatment center that is a non-Tribal provider. Jackie is enrolled in Premier, a private health insurance carrier. Premier's contracted rate with Tranquility is \$250 per day. The patient responsibility is \$50.

Jackie receives an invoice from Tranquility for \$46,500

- \$1800 daily rate x 30 days = \$54,000
- Premier paid: \$6000 (\$200 x 30 days)
- Jackie's copay: \$1500 (\$50 x 30 days)
- Premier bills Jackie for \$46,500 (\$54,000 - \$7,500)

Scenario 2

Small Village Tribal Health Clinic has a primary care patient, David, who has been experiencing alcohol substance use disorder for the last ten years. David is enrolled in Marina Healthcare, a managed care organization (MCO) plan. On March 23rd, David says for the first time ever that he's ready for treatment. Jane, the Tribal assister for Small Village Tribal Health Clinic, finds a bed at a nearby facility, Tranquility. However, Tranquility tells Jane they are only accepting patients who enrolled in the Universal Healthcare MCO plan. Jane then tries to enroll David into Universal Healthcare. Jane finds out that she has to make sure there are no claims from Marina Healthcare for the month of March. She sees there are several claims. HCA tries to help but says that because there are outstanding Marina claims, David can't change his MCO plan until April 1. As a result, Jane is unable to change David's plan, and David must wait until April 1st. April 1st arrives, and Tranquility no longer has an available bed.

Jane looks at another facility called Harmony. Harmony only takes patients from Premier Health MCO. The facility says, "Don't worry, you can just pay cash instead."

David now changes his mind and no longer wants to go to treatment.

Scenario 3

Small Village Tribe operates Eagle Sound Lodge, a substance use disorder treatment center located in a rural area. Eagle Sound Lodge serves 2,000 AI/AN and non-American Indian/Alaska Native (AI/AN) patients and is the only SUD treatment center in the service area.

Recently, health insurance issuer, Premier, sent the Eagle Sound Lodge a letter denying a total of 10 claims based on the following factors:

1. Eagle Sound Lodge does not have a contract with Premier.
2. Eagle Sound Lodge has providers that are licensed out-of-state but not in Washington.

Scenario 4

Chelsea, a member of a Tribe located outside Washington State, is an enrollee of LifeSmart, a zero-cost sharing QHP through the Washington Healthplanfinder. Chelsea's primary care provider is Small Village Tribal Health Clinic located in Washington State.

Small Village Tribal Health Clinic evaluates Chelsea and determines she needs to see a cardiologist for complications related to AFIB. Small Village Tribal Health Clinic makes a purchase and referred care referral to a cardiologist who is in Chelsea's QHP network.

LifeSmart sends Chelsea an explanation of benefits that indicated that Chelsea was responsible for 100% of the cost of her cardiologist visit because the referral came from Small Tribal Health Clinic, an out-of-network provider. LifeSmart further informs Chelsea that while her Small Village Tribal Health Clinic is out-of-network, there are several in-network IHCP providers she can choose from for future visits.

Scenario 5

Small Village Tribe has a Tribal health clinic with a legal agreement with the Indian Health Service. Under this agreement, the Tribe manages and delivers health care programs for their members in accordance with the Indian Self-Determination and Education Assistance Act.

The Small Village Tribal Health Clinic receives the following notice from Premier, health insurance issuer: “In order to have your provider remain on our online directory, you must complete a primary source verification via the credentialing process. Additionally, the National Committee for Quality Assurance (NCQA) also requires health plans to directly credential primary care providers. If your provider does not wish to continue credentialing with us, we will need to remove your provider from our directory and reassign any members to convert the provider from a primary care provider to a specialist.”

Scenario 6

Small Village Tribal Health Clinic receives a notice from Premier health insurance issuer that Premier will not provide the clinic a contract because Premier requires the clinic's physicians to have hospital privileges. The clinic's physicians do not have hospital privileges. All the surrounding hospitals currently have hospitalists who admit patients in the hospital.



What Happens When These Rules Are Not Followed?

Discussion



OIC Enforcement



Enforcement of AI/AN and IHCP Legal Protections

The OIC has a formal complaint process for insurance enrollees, providers and others when issuers are not following state rules.



Enforcement of AI/AN and IHCP Legal Protections

In general, complaints filed with the OIC include:

- insurance policies benefit coverage issues;
- insurance policy cancellations and renewals;
- medical necessity determinations by an insurer or their subcontractors; and
- payment claims delays, denials or disputes.



Enforcement of AI/AN and IHCP Legal Protections

Complaints can be filed with the Office of the Insurance Commission (OIC) online at: <https://www.insurance.wa.gov/file-complaint-or-check-your-complaint-status> or by mail, fax, email or chats with OIC staff.

Tribal governments and Indian health care providers may seek assistance from the OIC's tribal liaison in the filling of the complaint. Information is found here: <https://www.insurance.wa.gov/tribal-relations>



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