



## Tribes and Medicaid: 16 Key Rules

### Federal Protections for American Indian/Alaska Natives and Indian Health Care Providers

#### **RULE #1: TRIBAL CONSULTATION**

Washington State Health Care Authority (HCA) must consult with Tribes and obtain their input prior to any state plan amendment changes that impact Tribes. [42 U.S.C. § 1396a\(a\)\(73\)](#); [HCA Tribal Consultation & Communication Policy \(2012\)](#); [RCW 43.376](#).

#### **RULE #2: 100% FMAP**

The federal government provides states 100% federal match for services provided to American Indian/Alaska Native (AI/AN) Medicaid beneficiaries through Tribal facilities (commonly referred to as 100% Federal Medical Assistance Percentage or FMAP). [42 U.S.C. § 1396d\(b\)](#); [42 C.F.R. § 433.10\(c\)\(2\)](#).

#### **RULE #3: 100% FMAP AND NON-IHCPs**

Tribal facilities may enter into care coordination agreements with non-Tribal providers to furnish certain services for their patients who are AI/AN Medicaid beneficiaries, and the amounts paid by the state for services requested by facility practitioners in accordance with those agreements are eligible for the 100% FMAP. [CTRS. FOR MEDICARE & MEDICAID SERVS. \(CMS\), DEP'T OF HEALTH AND HUMAN SERVS., "Received Through" an IHS/Tribal Facility and Furnished to Medicaid-Eligible American Indians and Alaska Natives \(SHO #16-002\) at 2 \(Feb. 26, 2016\)](#).

#### **RULE #4: ALL-INCLUSIVE RATE (AIR)**

AIR is a Medicaid reimbursement method available to Tribal facilities annually calculated by the Indian Health Service (IHS) and published in the federal register. [Reimbursement Rates, IHS](#).

#### **RULE #5: TRIBAL FACILITY ELIGIBILITY FOR AIR**

The determination of whether a Tribal facility is eligible for AIR reimbursement is wholly federal. [42 U.S.C. § 1396j\(a\)](#); [MOA Between the IHS and The Health Care Financing Administration](#).

#### **RULE #6: FOUR WALLS**

Tribal facilities in Washington State are authorized to furnish services provided by clinic personnel under the direction of a physician when the services are: (1) to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address; or (2) located in a facility operated by the primary Tribal facility. [HCA STATE PLAN AMENDMENT 25-0015 \(June 13, 2025\)](#).

#### **RULE #7: ONE FACILITY, ONE RATE**

States must uniformly apply a single reimbursement to all Medicaid beneficiaries receiving Medicaid services and are prohibited from paying one rate for AI/AN patients and a different one for non-AI/AN patients. [CMS, POLICY GUIDANCE REGARDING INDIAN HEALTH CARE REIMBURSEMENT ISSUES \(Dec. 23, 1998\)](#).

#### **RULE #8: TRIBAL FINANCING OF STATE MATCH**

Tribes must be "given a true choice" and "expressly agree" to finance the state's share of Medicaid, and if Tribes agree, Tribal expenditures "must be funded through non-ISDEAA sources." [HCA, 2025-27 Regular Budget Session Policy Level-GC-Non-Native SUD at Tribal Facilities; CMS, Letter \(Oct. 18, 2005\)](#).

#### **RULE #9: CONTRACTS NOT REQUIRED**

Indian health care providers (IHCPs) are not required to contract with managed care organizations (MCOs) to be reimbursed or for an AI/AN to have access to an IHCP. [25 U.S.C. § 1621e\(c\)](#).

### **RULE #10: RIGHT OF RECOVERY RULE**

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

### **RULE #11: IHCP ACCESS**

MCOs will treat every IHCP as an in-network provider, whether participating or not, to ensure timely access to services for AI/AN enrollees who are eligible to receive services from such providers. [42 C.F.R. § 438.14\(b\)\(1\)](#).

### **RULE #12: NO AUTO ASSIGNMENT**

Individuals identifying themselves as AI/AN on their application will be exempted from enrollment in managed care unless they opt-in to participate. Fee-for-Service (FFS) will be maintained for both behavioral and physical health services for AI/AN. [HCA, Washington State Tribal Centric Health Plan Agreement \(July 1, 2017\)](#).

### **RULE #13: 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 #14: LICENSURE AND CREDENTIALING**

**Licensure of IHCP Facilities.** A Medicaid program must accept an IHCP as a provider eligible for reimbursement of health care services furnished to an AI/AN on the same basis as any other qualified provider under the program if the entity meets generally applicable state or other requirements for participation as a provider of health care services under the program. A licensed or certified behavioral health agency in Washington State, includes an entity with a Tribal attestation that it meets state minimum standards for a licensed or certified behavioral health agency. [25 U.S.C. § 1647a\(a\)\(1\)](#); [RCW 71.24.025](#).

**Credentialing.** A non-contracting IHCP is not subject to the MCO credentialing requirements. [HCA, Letter \(June 22, 2020\)](#).

**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](#).

### **RULE #15: DISCRIMINATION EXEMPTION**

IHCPs cannot be required 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 #16: INSURANCE AND INDEMNIFICATION**

**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](#).

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