



806 SW Broadway, Suite 900
Portland, OR 97205

T 503.242.1745
F 503.242.1072

HOBBSSTRAUS.COM

Memorandum

June 9, 2016

TO: Tribal Health Clients
FROM: Hobbs, Straus, Dean & Walker, LLP
RE: *Indian Health Service Purchased/Referred Care Webinar*

On June, 7, 2016 the Indian Health Service (IHS) held an informational webinar on implementation of the new Purchased/Referred Care (PRC) regulations pertaining to payment at favorable rates, including the Medicare Like Rate. This is the second webinar that IHS has conducted, and the purpose was to provide an overview of the final regulations, a demonstration by the Fiscal Intermediary on “pricing information,” and a review of frequently asked questions. Enclosed are copies of the two presentations given during the webinar. Because much of the second webinar repeated information from the first one, we report below only new information that we thought would be of the most interest to you. For more information about the first webinar, please see our May 18, 2016 memorandum.

Dear Provider Letter

The IHS has prepared the “Dear Provider Letter,” as promised. The purpose of the letter is to help educate providers about the rates that apply under the rules for those tribes and tribal organizations who have opted into the rules. A copy of the letter is enclosed. IHS has made the letter available under “PRC Rate Information” on its PRC website, though the posted letter is in PDF format rather than in Microsoft Word.

Pricing Information

The IHS uses the IHS Fiscal Intermediary (FI) for its claims processing, and the FI has been identified by the IHS as one of the claims pricing options that tribes could choose to use if they do not otherwise have their own. The FI provided a presentation regarding the way in which the FI proposes to implement the new PRC payment rules to determine the estimated charges that the IHS would use to determine whether or not to obligate funds for PRC. The FI’s process is still in draft form, and the FI is waiting on information from the IHS Headquarters before updating the procedures. Some of the procedures will require manual research and calculation, so will be subject to potential manual errors, and the FI pointed out that the procedures are for determining estimated charges, and thus the amounts estimated may not exactly match the final payment amounts. The FI also noted that the procedures do not account for available alternate resources. Please see the enclosed presentation for more information.

Frequently Asked Questions

The IHS quickly ran through some answers to frequently asked questions the IHS has been receiving related to the new PRC regulations. The draft responses are in the clearance process with IHS Headquarters and will soon be posted on the IHS's PRC website. Many of the questions pertain to basic implementation of the regulations and determining what rate should apply to the PRC services.

In response to one question about how the new PRC rates affect tribal self-insurance, the IHS said that: 1) PRC will apply only to purchases made by the PRC program, 2) PRC programs are payors of last resort, and 3) the new regulations do not change that. The PRC program will thus pay only after all other alternate resources have paid. The answer given over the webinar thus skirted around some of the recent issues that have been raised about the IHS now treating tribal self-insurance as an alternate resource. It will remain to be seen what the final FAQ answer states about that issue.

As the IHS has previously indicated, tribes can opt-out of the rules after they have opted-in, such as if the tribes determine that the rates are not working for their programs. In order to opt-out, tribes would need to amend their contract or compact to remove the opt-in language. Additionally, IHS said that if providers pay on a per diem basis, the rule provides flexibility for tribes and tribal organizations to negotiate such rates with the providers, even if they are higher than the providers' most favored customer rate.

Conclusion

If you have any questions about the new PRC regulations or any of the issues discussed in this report, please do not hesitate to contact Geoff Strommer or Starla Roels at 503-242-1745, gstrommer@hobbsstrauss.com, sroels@hobbsstrauss.com or Elliott Milhollin at 202-822-8282, emilhollin@hobbsstrauss.com.