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MEMORANDUM

May 18, 2016

TO: Tribal Health Clients

FROM: Hobbs, Straus, Dean & Walker, LLP

Re: *IHS Hosts an Informational Webinar on Purchased and Referred Care Rates.*

On May 17, 2016, the Indian Health Service (IHS) hosted an informational webinar on the implementation of its final rule to expand Medicare-Like Rates (MLR) to non-hospital-based Purchased and Referred Care (PRC) services. 81 Fed. Reg. 14977 (Mar. 21, 2016). The webinar was open to all federal and tribal PRC staff, tribal health care administrators, and other interested parties. It included an overview of the final rule as well as an opportunity for participants to ask IHS officials about the rule and its implementation process. *The regulation is effective on Friday, May 20, 2016.*

Summary of Rule

The rule is intended to permit IHS, tribal, and urban Indian health programs (I/T/Us) to purchase physician and other non-hospital-based services at rates comparable to those paid by other federal programs.¹ Under the current system, I/T/Us generally reimburse non-hospital providers for PRC services according to the provider's billed charges or at contractually negotiated rates, which tend to be much higher than those paid by Medicare or private insurers for the same services. The rule applies only to payments to providers and suppliers not covered by the existing MLR regulations at 42 C.F.R. part 136, subpart D, which are applicable to Medicare participating hospitals. By expanding the MLR option to non-hospital-based services, the IHS hopes that I/T/Us will be able to realize significant savings under their PRC programs, and thereby provide expanded services to tribal beneficiaries.

The final rule provides that if an I/T/U and a specific provider have negotiated a specific amount, the I/T/U will pay that amount provided it is equal to or better than the provider's "Most Favored Customer" (MFC) rate "as evidenced by commercial price lists or paid invoices and other related pricing and discount data to ensure that the I/T/U is

¹ The final rule applies to certain providers and suppliers for services authorized by: (a) IHS-operated PRC programs; (b) urban Indian health organizations under Title V of the Indian Health Care Improvement Act; or (c) Indian tribes or tribal organizations pursuant to an IHS contract or compact under the Indian Self-Determination Act, provided that the tribe or tribal organization has opted-in to the rule.

receiving a fair and reasonable price.” However, the MFC limitation will not apply if the I/T/U otherwise determines that the rate is fair and reasonable and that payment of the negotiated amount is in the best interest of the I/T/U. If there is no negotiated amount meeting that criteria, then the final rule provides that the I/T/U shall pay the lowest of: (i) the applicable Medicare rate; (ii) an amount negotiated by a repricing agent, if applicable; or (iii) an amount not to exceed the provider or supplier’s MFC rate. If no Medicare rate exists for the applicable item or service, and none of the other payment alternatives apply, the final rule provides that the allowable payment amount “shall be deemed to be 65% of authorized charges.”

IHS Informational Webinar

Over 170 attendees participated in the IHS webinar, which addressed numerous questions and concerns associated with implementation of the final rule. Below we highlight the main issues discussed during the webinar.

What are the steps for implementing the final rule? Terri Schmidt, Acting Director of the Office of Resource Access and Partnerships (ORAP), explained that implementation of the final rule will be a seven-step process:

- (1) IHS press release announcing the new MLR for non-hospital PRC services;
- (2) All Tribes Call on how the provisions impact tribal beneficiaries;
- (3) Regularly scheduled IHS training webinars;
- (4) Release of IHS “Dear Tribal Leader” letter;
- (5) Release of IHS “Dear Provider” letter;
- (6) In-person training sessions at the IHS Partnership Conference in Phoenix, Arizona on June 28-30, 2016;
- (7) Online public access to training modules and PRC-related materials.

Ms. Schmidt noted that the Dear Tribal Leader and Dear Provider letters are awaiting clearance from IHS Headquarters and have not yet been released.

What is the reasoning behind allowing tribes to opt-in to the final rule, rather than requiring that they comply? Ms. Schmidt explained that tribes have the right to opt-in to the new regulations, but cannot be required to do so, in accordance with principles of tribal sovereignty and self-determination. She stated that to opt-in tribes must insert language regarding the PRC regulations into their existing compact or funding agreements such as the following: “Tribal Health Program agrees to be bound by 42 C.F.R. Part 136, subpart I in the administration and provision of PRC services carried out under this Agreement.” Ms. Schmidt clarified that this example language is only a suggestion on the part of IHS, and that tribes are free to draft their own implementing provision as needed.

How do providers accept the new PRC rates? Brenda Jeanotte-Smith, IHS Headquarters, reported that a provider accepts the new PRC rates by filing a purchase

order or submitting a claim. She clarified that no further action is needed to accept the PRC rates.

Will providers be able to refuse to see patients under the new PRC rates? Ms. Jeanotte-Smith confirmed that providers may refuse to see a patient under the MLR for non-hospital-based PRC services because providers are not required to accept the new rates. She reported that I/T/Us can negotiate higher rates of payment with such providers beyond the MLR, provided that the higher rates meet the requirements for a reasonable pricing agreement based on the “Most Favored Customer” rate. She requested that I/T/Us send information on providers refusing care directly to IHS Headquarters for review.

What claims processing options are available? Ms. Schmidt reported that there are currently four PRC claims processing options available. First, a claim may be processed through a Fiscal Intermediary (FI), which is a private insurance company under contract with IHS to validate and pay for PRC services. Second, a tribe or tribal organization may contract with a third-party administrator. Third, health care administrators may download the PC Pricer tool from the Centers for Medicare and Medicaid Services website.² Fourth, PC Pricer software may be alternatively purchased from a commercial provider.

What details are available for the IHS Partnership Conference in June 2016? The 2016 IHS Partnership Conference will be held in collaboration with ORAP and the Office of Information Technology (OIT) and focus on the theme of “Providing Quality, Patient-Centered Care through Health Information Technology Innovation and Improved Business Practices.” The conference will take place on June 28-30, 2016, at the JW Marriott Desert Ridge Hotel, 5350 E. Marriott Dr., Phoenix, Arizona 85054. Participants can view the latest agenda and register for the event at <http://www.cvent.com/d/bfqtzq>.

Conclusion

For additional information or assistance regarding these issues, please contact Elliott Milhollin (emilhollin@hobbsstrauss.com or 202-822-8282); Geoff Strommer (gstrommer@hobbsstrauss.com or 503-242-1745).

² The PC Pricer tool is available through the following link: <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PCPricer/Downloads/Updated-PCPricer-Download-Instructions.pdf>.