



USET

SOVEREIGNTY PROTECTION FUND

1730 Rhode Island Avenue, NW
Suite 210
Washington, DC 20036
P: (615) 872-7900
F: (615) 872-7417
www.usetinc.org

Transmitted electronically to:
Tribalgovernmentconsultation@va.gov

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The Honorable Denis McDonough
Secretary
U.S. Department of Veterans Affairs
VHA 16
810 Vermont Avenue NW
Washington, D.C. 20420

Re: Comments on VA Proposed Rule on Copayment Exemption for Indian Veterans

Dear Secretary McDonough,

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to submit comments in response to the Department of Veteran's Affairs' (VA) request for comment on the VA copayment exemption for American Indian and Alaska Native (AI/AN) veterans. USET SPF has long sought this exemption, as subjecting AI/AN veterans to co-pays for the health care to which they are entitled is a violation of federal trust and treaty obligations. We are generally supportive of the effort to implement this policy following its codification in 2021 but offer the following comments to the agency regarding facets of the policy that could be changed to better serve Tribal Nations.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

AI/AN Prepaid for Their Healthcare

AI/AN veterans serve in the military at higher rates per capita than any other group in the nation, and the VA itself has found that Native American veterans are more likely to have a service-connected disability than non-Native veterans. In addition, AI/AN veterans also often face significant disparities in care compared to other veterans. Particularly in the USET SPF region, AI/AN veterans face a lack of services due to their remote locations, often the chronically underfunded Indian Health Service (IHS) or Tribally-

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe–Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mi'kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

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operated health facilities are their only option for care. USET SPF is strongly supportive of removing copayment requirements for AI/AN veterans. AI/AN veterans prepaid for their healthcare through the cession of their Tribal homelands to form the United States.

When AI/AN veterans visit IHS or Tribally-operated facilities, they are not subject to any cost sharing requirements. However, when AI/AN veterans seek care with the VA, they are subject to certain copayment requirements. To that end, VA should remove any and all copayment requirements for AI/AN veterans, including copayments required for domiciliary care, nursing home care, institutional care, and the requirement to pay copayments on and following the fourth urgent care visit. While USET SPF understands VA's desire to reduce overuse of urgent care services by requiring copayments on the fourth visit, we remind VA that subjecting AI/AN veterans to copayments as a condition of healthcare is a violation of the federal trust and treaty obligations which all federal agencies share equally. We understand that the statute accomplishes its goals by modifying the existing definition to include AI/AN veterans, but assert that VA should instead focus on improving its delivery of trust and treaty obligations and on recognizing the unique status of AI/AN veterans, rather than on the simplest implementation of the rule.

Additionally, requiring copayments for urgent care services may have an unintentional chilling effect on AI/AN veterans seeking care. For many AI/AN veterans, urgent care services are more accessible than primary care services and limiting urgent care may lead to AI/AN veterans delaying or forgoing needed care. Further, VA has not made it clear in the rule whether or not urgent care services provided by IHS, Tribal or urban facilities would count toward the limit of three urgent care visits. To remedy these potential consequences, VA should eliminate the copayment requirements for AI/AN veterans entirely.

Align Standards with Indian Health Service

USET SPF does not support the VA's decision to require documentation that a veteran is an Indian or urban Indian according to 25 U.S.C. 1603(13) and (28). Along with other Tribal organizations and stakeholders, USET SPF recommends that VA allow AI/AN veterans to self-attest their status as Indian or urban Indian. This is in line with other federal health programs that use self-attestation processes, such as Medicaid and the Affordable Care Act Marketplace. We believe that self-attestation will reduce ambiguity both for AI/AN veterans and the VA, and would reduce barriers to care for many veterans who lack easy access to the appropriate documentation. USET SPF does support a caveat that would allow the VA to request proof of eligibility at a later date. While the VA would reserve the right to later review eligibility, self-attestation of status allows AI/AN veterans to begin receiving their special protections immediately. In addition, while the rule currently seems to respect Tribal sovereignty by allowing each Tribal Nation to determine the appropriate documentation, this policy may lead to additional administrative burdens for Tribal Nations and could prevent AI/AN veterans from receiving vital health care services. USET SPF strongly supports the right of AI/AN veterans to self-attest to their eligibility status.

Require Employee Training on Documentation

In pursuit of minimizing burdens on AI/AN veterans and in furtherance of cultural sensitivity, VA should train front-line and administrative personnel, as well as anyone who is involved in this process, on the appropriate documentation and eligibility determination process. Those involved in the process should be made aware that the documentation can take many forms, some which may be unfamiliar or unique. VA employees should also be trained on the meaning and importance of Tribal sovereignty and on their role as stewards of the federal trust and treaty obligations. These trainings would support and are supported by President Biden's "Memorandum on Uniform Standards for Tribal Consultation," which calls for annual training on consultation, the Nation-to-Nation relationship and Tribal sovereignty for agency employees who work with Tribal Nations or on policies with Tribal implications. Within this policy, all practicable efforts to minimize the burden on the veterans themselves should be taken. Additionally, VA should create a clear,

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timely process for recourse when AI/AN veterans are mistakenly determined to not be an Indian or urban Indian under this policy.

Conclusion

Removal of the copayment requirement for AI/AN veterans is long overdue. AI/AN veterans prepaid for their healthcare first through the cession of our homelands to create the United States, and then through their service and sacrifice for this nation. USET SPF appreciates the elimination of the majority of copayment requirements but strongly urges the VA to consider full elimination of all payment requirements, in line with the services available through the IHS. Additionally, VA must take care to properly implement this policy to ensure no additional burdens are placed on AI/AN veterans, and that culturally appropriate and sensitive care is provided to AI/AN veterans at each step of the process. Should you have any questions, please contact Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.