



# 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](http://www.usetinc.org)

Transmitted electronically to:  
[consultation@ihs.gov](mailto:consultation@ihs.gov)  
[tribalgovernmentconsultation@va.gov](mailto:tribalgovernmentconsultation@va.gov)

January 23, 2024

Roselyn Tso  
Director  
Indian Health Service  
5600 Fishers Lane  
Rockville, MD 20357

Shereef Elnahal, M.D., M.B.A.  
Under Secretary for Health  
Veterans Health Administration  
810 Vermont Avenue NW  
Washington, DC 20420

Dear Director Tso and Under Secretary Elnahal,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Indian Health Service's (IHS) request for input on the revised reimbursement agreement between the IHS and the Department of Veterans Affairs (VA). The revised agreement contains several important updates and additions, including the significant expansion of reimbursable services to include Purchased/Referred Care (PRC) and contracted travel. USET SPF has [advocated since the drafting of the original agreement](#) for the expansion of reimbursable services beyond those included in the original agreement, and has also [commented on the requirement that the VA reimburse the IHS for PRC services](#). As such, we appreciate the expansion of reimbursable services within this agreement, and offer the following comments in an effort to ensure that the agreement is implemented properly, efficiently, and in a way that reflects existing trust and treaty obligations.

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.<sup>1</sup> 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.

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<sup>1</sup> 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).

*Because there is Strength in Unity*

## Expansion of Reimbursable Services

USET SPF commends the decision to expand the types of services eligible for reimbursement under this revised agreement. Since the development of the original agreement in 2012, USET SPF has [maintained our position](#) that there was no reason to restrict reimbursement in the original agreement to Direct Care Services. Under the first agreement, VA did not reimburse the IHS for PRC, and reimbursable Direct Care services were limited to those provided in the VA Medical Benefits package. As we stated in the past, the decision to deny reimbursement for those services is contrary to the language of Section 405(c) of the Indian Health Care Improvement Act (IHCIA), which requires the VA to reimburse the IHS for services provided to eligible beneficiaries and does not place any limitations on the services to be reimbursed. In 2021, Congress [revised the language within IHCIA](#) to specifically require VA to reimburse the IHS for PRC and contracted travel. USET SPF appreciates both the amendment by Congress and the decision by IHS and VA to revise the agreement to reflect these requirements.

However, we maintain that prior to the statutory amendment in 2021, the language of the IHCIA had already provided for the reimbursement of services provided to eligible veterans within the Indian Health System. In addition, Section 2901(b) of the Affordable Care Act specified that health programs operated by the Indian Health Service, Tribal Nations, Tribal organizations, and Urban Indian Organizations (UIOs) are payers of last resort. Consequently, the original agreement should never have required the IHS to bear the cost of PRC and other non-Direct Care services provided to eligible Tribal citizen veterans. As Tribal reimbursement rights are statutory, they cannot be delayed or made contingent upon the signing of a voluntary template or rate agreement that is not required by statute. While the draft revised agreement only allows for reimbursement for services provided after the effective date of the agreement, the original statutes gave Tribal Nations a right to reimbursement with an effective date of March 23, 2010. There is no basis in the law for disallowing reimbursement of services provided at a time when the legal right to reimbursement existed, simply because an agreement on the mechanism had not yet been signed by the agencies. Therefore, the VA must address retroactive reimbursements and consult with Tribal Nations regarding the process for billing and payment retroactive to the enactment of these laws.

In addition, USET SPF thanks the VA and IHS for their decision to include telehealth services as reimbursable services, particularly the decision to adopt the expansive definition of telehealth which includes audio-only and other more accessible services. Telemedicine has become increasingly vital to reaching patients within the Indian Health System, and VA reimbursement for those services will further reduce barriers to accessing care.

## Implementation of the Revised Reimbursement Agreement

As the VA and IHS seek to implement the revised reimbursement agreement, VA will also need to update the agreements that it has with individual Tribal Nations and health programs. USET SPF appreciates VA's indication in the [Dear Tribal Leader Letter](#) that they will work to revise and execute these individual agreements. USET SPF urges the VA to meaningfully consult with each Tribal Nation or health program on the content of the agreements. As part of our [comments to VA in 2015](#), USET SPF referenced statements by VA and IHS officials that the national agreement was a "floor rather than a ceiling," but noted that many local VA officials refused to entertain additional or alternate language. We maintain that the VA has a responsibility to implement reimbursement agreements that reflect individual Tribal Nation priorities and

circumstances. As the revised agreements are consulted on and finalized, USET SPF strongly urges the VA to use the national agreement as a basis for consultation on agreements with Tribal health programs rather than as a concrete template. At the same time, we urge the VA to be as efficient as possible in the development and execution of these individual agreements to avoid unnecessary delays in reimbursements to Tribal Nations and health programs.

## Conclusion

USET SPF appreciates the opportunity to provide comments on the revised IHS-VA Reimbursement Agreement, as well as for the critical revisions and additions to this new agreement. While overdue, the decision to expand the scope of reimbursable services within this agreement will assist VA in ensuring that it delivers on its promises to Tribal Nations and Native American veterans. The federal government has a dual obligation to Native veterans who have prepaid for their healthcare, both through the cession of Tribal homelands and resources and through their defense of our nation. We hope that this revised agreement will ensure that Native veterans face fewer barriers to accessing the care they deserve and are owed. We look forward to continuing to work with the IHS and VA as they implement the revised agreement. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at [LMalerba@usetinc.org](mailto:LMalerba@usetinc.org) or 615-838-5906.

Sincerely,



Kirk Francis  
President



Kitcki A. Carroll  
Executive Director