



USET

SOVEREIGNTY PROTECTION FUND

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The Honorable Chiquita Brooks-LaSure
Administrator
Center for Medicare and Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Brooks-LaSure,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to express our strong support for the “Four Walls” exception in the Outpatient Prospective Payment System (OPPS) proposed rule for Indian Health Service (IHS) and Tribal clinics, which would allow Tribal and IHS providers to bill for Medicaid services provided outside the “four walls” of a facility. This has been a long-standing priority for USET SPF, along with Tribal Nations and organizations across the country, and we appreciate its inclusion in the 2025 OPPS proposed rule. We urge the Centers for Medicare and Medicaid Services (CMS) to finalize the Four Walls exception for Tribal and IHS clinics this year.

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 Mexico¹. 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.

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).

Because there is Strength in Unity

Support for Four Walls Exception as Fulfillment of Trust and Treaty Obligations

The United States has trust and treaty obligations to provide for the health and well-being of Tribal Nations, and these obligations have been acknowledged and upheld through myriad acts of Congress, numerous treaties, Executive Orders, federal case law, regulations, and the U.S. Constitution. These obligations exist in perpetuity, and all federal entities, including CMS, are responsible for honoring and upholding them.

Despite these promises, the United States has consistently failed to honor and fulfill its obligations to provide for the health and well-being of Tribal Nations and our citizens, resulting in disproportionate rates of health disparities among our communities and people. Indeed, funding and resources for the Indian health care system pale in comparison to that of other federal health programs, despite the legal and moral obligations of the United States to provide for our health care.

When the Indian Health Care Improvement Act (IHCA) was passed into law, it fundamentally changed the Indian health system by expanding the authority of IHS and Tribal facilities to bill Medicare and Medicaid for services provided to patients enrolled in those programs. Now, revenues from billing Medicare and Medicaid make up 60% or more of the operating budgets of IHS and Tribal facilities, and that revenue has allowed for significant service expansion in Indian Country.

However, the system under which IHS and Tribal clinics currently operate is incompatible with Medicare and Medicaid billing, resulting in an inability to maximize resources. For years, IHS and Tribal clinics billed CMS for services provided both within the four walls of our clinics and outside in community and home-based settings – a critical practice for delivering health care in Tribal communities. But, in 2016, CMS changed its position on this issue and indicated that the statutes and regulations governing services outside the four walls have “always” prohibited this practice, despite long-standing practice in Indian Country and the nature of our health systems. This new interpretation is not only inconsistent with the federal government’s trust and treaty obligations to Tribal Nations and our authorities under IHCA, but has resulted in significant revenue reductions and diminishment of services to our communities.

Fortunately, CMS recognized this burden and the difficulty of enforcement around this issue, and has issued a non-enforcement “grace period” that has been extended several times. However, USET SPF, the CMS TTAG and others have consistently advocated for a permanent fix to the four walls limitation to ensure our continued ability to bill for these services, and as a critical improvement in CMS’ delivery of trust and treaty obligations.

Four Walls Fix is Necessary Due to Unique Circumstances in Indian Country

USET SPF, along with the CMS TTAG and other Tribal entities, strongly supports this permanent fix to the Four Walls limitation for IHS and Tribal clinics. With a fix in place, IHS and Tribal clinics would be rightfully reimbursed for Medicaid services provided by telehealth and in our communities outside the physical walls of our facilities. This is particularly important given the nature of health care and the delivery of services in Indian Country.

In numerous Tribal communities, including many in the USET/USET SPF region, health care services are delivered in a variety of ways-- often in community or home-based settings. As Tribal communities face disproportionately high rates of physical and mental health concerns, paired with lack of transportation and long distances to clinic services, the ability of Tribal Nations to provide care via telehealth or community outreach is not only invaluable, but critically necessary. Barriers to care in Indian Country are frequently

much higher than in other communities and providing care over the phone or in a community setting greatly alleviates those barriers and allows Tribal Nations to care for our citizens in ways that are accessible and appropriate. In addition, IHS and Tribal facilities consistently face significant staffing shortages – an average of 25% vacancies across the system, with many experiencing higher rates – which severely limits our ability to provide robust health care services and results in many community members waiting months for in-person clinic appointments.

Further, in many cases, IHS and Tribal facilities are unable to provide clinical mental health and other specialty care services in person, forcing them to rely on telehealth services or referrals outside of the clinic. In order to provide specialty services, Tribal facilities require additional funding and resources beyond what is provided in the federal appropriations process. For many facilities and programs, this chronic lack of resources caused by federal failures must be subsidized with revenue from billing Medicare and Medicaid, which allows Tribal Nations to better meet the health care needs of our citizens.

However, limitations like the four walls issue greatly diminish the ability of Tribal programs to maximize their revenue and reimbursements. USET SPF strongly believes that CMS, as an arm of the federal government tasked with upholding the trust and treaty obligation, has a responsibility to remedy this critical issue for Indian Country.

Conclusion

USET SPF greatly appreciates the time and effort CMS put into identifying this fix. We offer our strong support through these comments for adoption of this rule as a permanent fix to the four walls limitation, both as resolution to a long-standing priority in Indian Country and as an acknowledgment of the federal government's obligations to Tribal Nations and our communities. Should you require more information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at Lmalerba@usetinc.org or 615-838-5905.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director