

**Sharing Agreement
between
Department of Veterans Affairs
(Name) VA Healthcare System
and
(Name) Tribal Health Program
for
Direct Care Services**

1. PURPOSE

This Sharing Agreement (Agreement) between the Department of Veterans Affairs (VA) and Tribal Health Program (THP) establishes the terms and conditions for the provision and reimbursement of direct care services performed by THP and reimbursed by VA for Eligible Veterans who are American Indian/Alaska Native (AI/AN).

2. AUTHORITIES

38 U.S.C. § 8153; 25 U.S.C. § 1645(c)

3. PARTIES

3.1. Department of Veterans Affairs, *NAME* VA Healthcare System, *FILL IN ADDRESS*

3.2. Tribal Health Program, *FILL IN ADDRESS*. (*Include List of Specific Facilities, if applicable*)

4. DEFINITIONS

4.1. “Eligible American Indian/Alaska Native (AI/AN) Veteran” The term means an AI/AN Veteran who is (1) eligible for services from IHS in accordance with 42 C.F.R. Part 136 and (2) is enrolled in VA’s system of patient enrollment in accordance with 38 U.S.C. § 1705 and 38 C.F.R. 17.36 or is eligible for hospital care and medical services under 38 U.S.C. § 1705(c)(2) and 38 C.F.R. 17.37(a)-(c) notwithstanding the AI/AN Veteran’s failure to enroll in VA’s system of patient enrollment.

4.2. “Claim” means a written demand or assertion by one of the parties seeking, as legal right, the payment of money, adjustment or interpretation of sharing agreement terms, or other relief, arising or relating to this Agreement.

4.3. “Days” in this Agreement refers to calendar days unless otherwise specified herein.

4.4. “Direct Care Services” means any eligible service that is provided directly by THP at the THP facility (ies) stated herein. “Direct care services” does not include care or service provided by THP through a contract established by THP (contract care) for a care or service provided outside the THP facility(ies).

TEMPLATE SHARING AGREEMENT
BETWEEN VA AND INDIVIDUAL THPs

4.5. “Eligible Service” means any health care service that is reimbursable under Paragraph 6.1.

4.6. “Eligible Veteran” means a Veteran who is enrolled in VA’s system of patient enrollment in accordance with 38 U.S.C. § 1705 and 38 C.F.R. 17.36 or is otherwise eligible for hospital care and medical services under 38 U.S.C. § 1705(c)(2) and 38 C.F.R. 17.37(a)-(c) notwithstanding the Veteran’s failure to enroll in VA’s system of patient enrollment.

4.7. “Tribal Health Program” has the meaning given that term in 25 U.S.C. § 1603(25).

5. ENROLLMENT FOR ELIGIBILITY

5.1. VA is responsible for determining whether an individual qualifies to be enrolled in its patient health care system or otherwise meets the definition of an Eligible Veteran for purposes of this Agreement.

5.2 THP may assist a Veteran in submitting an application for enrollment. If a Veteran who is eligible for services under 38 U.S.C. § 1705(c)(2) does not choose to enroll in VA’s system of patient enrollment, THP may submit identifying information to *FILL IN* so that VA may determine whether the Veteran meets the definition of an Eligible Veteran in accordance with this Agreement despite the Veteran’s failure to enroll.

6. ELIGIBILITY AND REIMBURSEMENT

6.1 Reimbursable Services. VA shall reimburse THP only for direct care services provided in the VA Medical Benefits Package available in accordance with 38 C.F.R. § 17.38 or otherwise available under statute or regulation to Eligible Veterans from VA. VA shall not reimburse for any direct care services that are excluded from the Medical Benefits Package or for which the AI/AN Eligible Veteran does not meet qualifying criteria (e.g., the requirement that the AI/AN Eligible Veteran needs the care as determined in accordance with 38 C.F.R. 17.38(b)).

6.1.1 Preauthorization. Preauthorization by VA is not required for AI/AN Eligible Veterans receiving direct care services from THP.

6.1.2 Determination of Eligible Services. THP may seek information from VA before delivering any direct care service as to whether the AI/AN Eligible Veteran is eligible for the specific services proposed to be provided by submitting a request for verification for eligibility. THP may verify eligibility (and any special conditions that may apply) by contacting VA Health and Eligibility (*fill in necessary contact information*). In particular, VA recommends that THP verify eligibility of an otherwise AI/AN Eligible Veteran for the following services, which have restricted eligibility requirements: dental, prosthetics (including hearing aids and eyeglasses), long-term care (including nursing home care), and transplant services.

TEMPLATE SHARING AGREEMENT
BETWEEN VA AND INDIVIDUAL THPs

6.2 Applicability of Agreement. This Agreement governs payment for only those direct care services, including applicable pharmaceuticals, provided to an AI/AN Eligible Veteran after the effective date of this Agreement.

6.3 Reimbursement Rates.

6.3.1 Generally. Except as otherwise provided herein, VA shall reimburse at rates based on Medicare payment methodologies for Eligible Services, including home and community based services, to AI/AN Eligible Veterans.

6.3.2 Inpatient Hospital Services. The payment methodology for inpatient hospital services applies to all inpatient direct care services furnished by a THP hospital, whether provided by part of a department, subunit, distinct part, or other component of a hospital (including health care services furnished directly by the hospital or under arrangements with contract providers who provide direct care services onsite in a THP hospital).

6.3.2.1. Payment for inpatient hospital services that the Medicare program would pay under a prospective payment system (PPS) will be based on the applicable PPS. For example, payment for inpatient hospital services shall be made per discharge based on the applicable PPS used by the Medicare program to pay for similar inpatient hospital services under 42 C.F.R. Part 412.

6.3.2.2. For hospitals that furnish inpatient services but are exempt from PPS and receive reimbursement based on reasonable costs (for example, critical access hospitals (CAHs)), including provider subunits exempt from PPS, payment shall be made per discharge based on the reasonable cost methods established under 42 C.F.R. Part 413, except that the interim payment rate under 42 C.F.R. Part 413, subpart E shall constitute payment in full.

6.3.2.3. The inpatient rates set forth above do not include inpatient physician services and practitioner services. The inpatient physician and other practitioner services shall be billed based on the Medicare fee schedule.

6.3.3 Outpatient Hospital Services and Freestanding Clinic Services. VA shall pay for outpatient and free standing clinics services to Eligible AI/AN Veterans using Medicare methodologies and Medicare rates for outpatient services and professional fees.

6.3.4 Pharmacy Services. To the extent pharmaceuticals are reimbursable under this Agreement, VA shall reimburse THP at *(an agreed upon rate – include agreed-upon rate in agreement)*.

TEMPLATE SHARING AGREEMENT
BETWEEN VA AND INDIVIDUAL THPs

6.3.4.1 Formulary. VA shall reimburse THP only for pharmaceutical drugs on the formulary used by VA. Requests for reimbursement of pharmaceutical drugs not on the VA formulary will be submitted for approval in advance of the request for reimbursement to VA Pharmacy.

6.3.4.2 Outpatient Pharmacy Services. VA shall reimburse actual cost of the drugs for outpatient emergent need prescriptions or other outpatient prescriptions to AI/AN Eligible Veterans to initialize or continue therapy before VA Consolidated Mail Outpatient Pharmacy (CMOP) can provide. VA reimbursement shall be limited to not more than a 30-day supply.

6.3.4.3 Referral to CMOP. VA will provide THP with information about how to make referrals to VA CMOP for AI/AN Eligible Veterans so they may obtain their prescriptions through the VA CMOP.

6.4 Co-Payments.

6.4.1 Pursuant to 25 U.S.C. § 1645(c), VA copayments do not apply to direct care services provided by THP to AI/AN Eligible Veterans.

6.4.2 Copayments for medication provided from the VA CMOP for the treatment of a non-service-connected condition will be billed to the AI/AN Eligible Veterans who are required pursuant to regulation to make co-payments for medication.

6.5 Invoice Submission and Processing.

6.5.1 Basic Requirements. Invoices for reimbursement shall be submitted to VA electronically to the maximum extent practicable. Invoices submitted electronically shall comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) standards for electronic transactions. Invoices submitted in paper form shall comply with the format required for the submission of claims under title XVIII of the Social Security Act.

6.5.2 Timely Filing. Invoices for direct care services provided after the effective date of this Agreement, not submitted to VA within 12 months from the date of service, shall not be reimbursed by VA.

6.6 Other Reimbursement. Pursuant to section 405(c) of IHCA (25 U.S.C. 1645(c)), the THP will seek payment from all other liable payers, as permissible by law for the THP, before seeking reimbursement from VA for direct care services provided to an AI/AN Eligible Veteran under this agreement so that VA is responsible for only the balance remaining after other third party reimbursements.

6.7 Information Sharing.

TEMPLATE SHARING AGREEMENT
BETWEEN VA AND INDIVIDUAL THPs

6.7.1 VA retains the right to bill an AI/AN Eligible Veteran's third party insurer to the extent permitted by 38 U.S.C. § 1729. When an AI/AN Eligible Veteran is treated by THP under this Agreement, THP shall, consistent with applicable privacy laws, provide VA with any applicable information regarding the AI/AN Eligible Veterans' private insurance, Workers' Compensation coverage, Medicare Supplemental Insurance information, and information with respect to third-party tortfeasor cases arising under the Federal Medical Care Recovery Act ("FMCRA"), 42 U.S.C. § 2651.

6.7.2 If THP seeks reimbursement under the terms of this Agreement for direct care services provided to AI/AN Eligible Veterans with third party insurance who are being treated for HIV, sickle cell anemia, drug or alcohol abuse, THP shall seek to obtain from the AI/AN Eligible Veteran, and provide to VA, a fully executed VA Form 10-5345, "Request For and Authorization To Release Medical Records or Health Information" so that VA may pursue reimbursement for medical care for any claims arising under 38 U.S.C. § 1729.

6.7.3 If THP seeks reimbursement under the terms of this Agreement for direct care services provided to an AI/AN Eligible Veteran who THP has determined to have been injured due to the negligence of a third party, THP shall seek to obtain from the AI/AN Eligible Veteran and provide to VA a fully executed VA Form 4763, Power of Attorney and Assignment, and VA Form 10-5345, "Request For and Authorization To Release Medical Records or Health Information" so that VA may pursue reimbursement under the Federal Medical Care Recovery Act (FMCRA), 42 U.S.C. 2651.

6.8 Denied Invoices. Nothing in this Agreement prohibits THP from seeking reimbursement from any other payer, including the Veteran (if consistent with THP's policies) for direct care services provided to a Veteran for which VA is not responsible due to the patient not being an Eligible Veteran or the services not being Eligible Services or for which VA denies payment for any other reason.

6.9 Denial, Reconsideration and Appeal

6.9.1 Denial. VA may deny an invoice or a portion of an invoice for direct care services provided by THP under the following conditions:

6.9.1.1 The Veteran is not an Eligible Veteran as defined in the Agreement;

6.9.1.2 the care or services provided are not direct care services;

6.9.1.3 the care or services provided are not otherwise reimbursable under the terms of this Agreement;

6.9.1.4 the invoice was not submitted as required under Section 6.5 of this Agreement; or,

TEMPLATE SHARING AGREEMENT
BETWEEN VA AND INDIVIDUAL THPs

6.9.1.5 the information needed to adjudicate the invoice, consistent with the information contained on the electronic Health Care Financing Administration (HCFA) and Universal Billing (UB) forms (or other applicable form), is not provided.

6.9.2 Notice and Request for Reconsideration. If VA denies reimbursement for an invoice, VA shall notify THP of the denial in writing together with a statement of the reason for the denial. The notice shall advise that THP may obtain a reconsideration of the denial by submitting a request for reconsideration or appeal in writing, within 90-days of the notice, setting forth the grounds supporting the request or appeal, including any documentation requested by VA for reconsideration. VA shall issue a decision on the request for reconsideration in writing within 30 days. In the event that THP disputes VA's request for reconsideration decision, THP may avail itself of the Disputes process in Paragraph 9.

7. QUALITY OF CARE

7.1 Applicable Standards.

7.1.1 Information Exchange. VA and THP shall develop a process to share patient records consistent with relevant privacy laws and will continue activities to share data electronically.

7.1.2 Collaboration. VA and THP shall promote quality health care services through collaboration activities to review, measure and report on quality of care delivered.

7.1.3 Certification and Accreditation. In order to receive reimbursement, each facility of the THP must meet Centers for Medicare and Medicaid (CMS) certification and CMS conditions of participation, or must have accreditation through the Joint Commission or Accreditation Association for Ambulatory Health Care (AAAHHC). THP shall submit certification and accreditation information to VA upon written request within 15 business days.

7.1.4 Medical Quality Assurance Activities. At least annually, VA and THP agree to use existing medical quality assurance activities, as required under accreditation or certification standards or maintained for reporting to IHS. THP agrees to share information with VA regarding its medical quality assurance activities, which shall include periodic review of care utilization (health system level trends) and care delivery consistent with current standards of care and evidence-based practices.

8. GENERAL PROVISIONS

8.1 Veteran's Choice of Provider. Nothing in this Agreement affects the right of AI/AN Eligible Veterans to choose whether they receive health care services in VA or THP facilities.

8.2 Privacy Standards.

TEMPLATE SHARING AGREEMENT
BETWEEN VA AND INDIVIDUAL THPs

8.2.1 Generally. VA and THP will comply with all applicable Federal laws and regulations regarding the confidentiality of health information.

8.2.2 THP Records. Medical, health and billing records of THP patients are subject to some or all of the following laws: the Privacy Act, 5 U.S.C. § 552a; the Freedom of Information Act, 5 U.S.C. § 552; the Drug Abuse Prevention, Treatment, and Rehabilitation Act, 21 U.S.C. § 1101, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act, 42 U.S.C. § 4541, the Administrative Simplification requirements of HIPAA, 45 C.F.R. Parts 160 and 164; Confidentiality of Medical Quality Assurance Records, 25 U.S.C. § 1675, the Patient Safety and Quality Improvement Act of 2005, and Federal regulations promulgated to implement those acts. Pursuant to the Indian Self-Determination and Education Assistance Act, as amended, THP's patient records may not be considered Federal records for the purposes of chapter 5 of title 5 of the United States Code (including the Privacy Act and the Freedom of Information Act) or may be considered Federal records for only limited purposes under those provisions.

8.2.3 VA Records. Records of VA payment for direct care services are subject to some or all of the following laws: the Privacy Act, 5 U.S.C. § 552a; the Freedom of Information Act, 5 U.S.C. § 552; Confidentiality of Certain Medical Records, 38 U.S.C. § 7332; Confidential Nature of Claims, 38 U.S.C. § 5701; the Administrative Simplification requirements of HIPAA, 45 C.F.R. Parts 160 and 164; Medical Quality Assurance Records Confidentiality, 38 U.S.C. § 5705; the Patient Safety and Quality Improvement Act of 2005, and Federal regulations promulgated to implement those acts. All requirements of HIPAA will be met before there is any sharing of identifiable patient information.

8.2.4 Exchange of Medical Records. Copies of medical records exchanged under the Agreement shall belong to the recipient agency, which will bear responsibility for information security and breach response with regard to those records.

8.3 Medical Malpractice. THP has medical malpractice insurance under the Federal Tort Claims Act ("FTCA") and, possibly other professional liability coverage that covers direct care services provided under this Agreement. VA will bear no responsibility for claims arising from health care provided to a Veteran under this Agreement. If VA receives a medical malpractice claim directly from a Veteran that primarily involves medical care rendered by THP, VA will promptly notify *THP FILL IN*. Where VA is identified as an involved party in a claim submitted to HHS, IHS or THP, THP will provide a copy of the claim and documents effecting resolution or disposition of the claim to the VA Office of the General Counsel (021B), 810 Vermont Avenue, NW, Washington DC 20420.

8.4 Rights of Veterans. Nothing in this Agreement restricts the right(s) of a Veteran to challenge or dispute, pursuant to Federal law or regulation, an eligibility determination made by VA.

TEMPLATE SHARING AGREEMENT
BETWEEN VA AND INDIVIDUAL THPs

9. DISPUTES. The Parties shall utilize all reasonable efforts to resolve any dispute at the lowest administrative level possible. In the event that either Party determines that further efforts are not conducive to resolving a dispute, the dispute shall be presented to the VA Contracting Officer for consideration; the VA Contracting Officer shall furnish a written reply on the dispute or claim to the THP within 90 days. The THP shall comply with any decision of the VA Contracting Officer pending final resolution of the matter.

9.1 In the event the Parties cannot amicably resolve the matter upon the decision of the VA Contracting Officer, a dispute or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by mediation. The neutral mediator shall be assigned from the Administrative Judges of the U.S. Civilian Board of Contract Appeals, with each Party bearing an equal share of any cost. The U.S. Civilian Board of Contract Appeals may furnish a neutral at no cost.

9.2 Any claim by the either Party against the other must be presented no later than 1 year after the effective date of cancellation or final expiration of this Agreement otherwise the party forfeits its right(s) to relief.

10. SURVIVAL OF TERMS. The rights and obligations of the parties under Paragraphs 6 (eligibility and reimbursement), 8.2 (privacy standards), 8.3 (medical malpractice), and 9 (disputes) shall survive expiration or cancellation of this Agreement. All other rights and obligations arising solely from this Agreement shall cease upon expiration or cancellation of the Agreement, provided expiration or cancellation of the Agreement shall have no effect on statutory rights or responsibilities of the parties.

11. EFFECTIVE DATE, TERM, TERMINATION, AND AMENDMENT.

11.1 Effective Date. This Agreement shall become effective upon the date when signed by all parties. The only official authorized to legally bind VA is the VA Contracting Officer.
THP FILL IN EQUIVALENT INFORMATION.

11.2 Term. This Agreement shall remain in effect for a term of *[NOT TO EXCEED FIVE]* years from the effective date.

11.3 Amendment. Except for Cancellation, this Agreement may be revised or amended only by mutual written agreement signed by the signatories (or their authorized representatives) to this Agreement.

11.4 Cancellation. Either party may cancel this Agreement at any time by providing a 60 day written notice of the intent to cancel the Agreement to the signatories (or their authorized representatives). Cancellation shall take effect at the end of the 60 day period established by the written notice.

12. SIGNATURE BLOCKS.