




COMMONWEALTH of VIRGINIA
Office of the Attorney General

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MEMORANDUM

TO: Emily McClellan
Regulatory Supervisor
Department of Medical Assistance Services

FROM: Davis Creef 
Assistant Attorney General
Office of the Attorney General

DATE: August 17, 2021

SUBJECT: Fast-Track Regulation – Tribal Health Clinic

You have asked the Office of the Attorney General to review and determine if Department of Medical Assistance Services has the statutory authority to promulgate these regulations and if they comport with applicable state law. I have reviewed the attached fast-track regulations posted to the Virginia Regulatory Town Hall that would implement the reimbursement criteria for Indian Health Service Tribal 638 Health Facilities.

Based on my review, it is my view that the Director of DMAS, acting on behalf of the Board of Medical Assistance Services under Virginia Code §§ 32.1-324 and 325, has the authority to amend this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority.

Under Virginia Code § 2.2-4012.1, if an objection to the use of the fast-track process is received within the public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, DMAS shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process set out in this article with the initial publication of the Fast-Track regulation serving as the Notice of Intended Regulatory Action.

If you have any questions or need additional information about these regulations, please contact me at 786-6522.

cc: Kim F. Piner, Esq.

Attachment

Proposed Text

[highlight](#)

Action: Tribal Health Clinic

Stage: Fast-Track

7/21/21 9:25 AM

12VAC30-80-26 Reimbursement for Indian Health Service Tribal 638 Health Facilities

A. Reimbursement for Tribal Health Clinics

1. Services provided by or through facilities of the Indian Health Services (IHS) which includes, at the option of the tribe, facilities operated by a tribe or tribal organization and funded by Title I or V of the Indian Self Determination and Education Assistance Act, also known as Tribal 638 facilities, are paid at the applicable IHS OMB rate published in the annual Federal Register or Federal Register Notices by IHS.

2. The most current published IHS OMB outpatient per visit rate, also known as the outpatient all-inclusive rate, is paid for up to five (5) outpatient visits per beneficiary per calendar day for professional services. An outpatient visit is defined as a face-to-face or telemedicine contact between any health care professional, at or through the IHS facility as described above, authorized to provide services under the State Plan and a beneficiary for the provision of Title XIX defined services, as documented in the beneficiary's medical record.

3. To be included in the outpatient per visit rate are Medicaid-covered pharmaceutical/drugs, dental services, rehabilitative services, behavioral health services, any and all ancillary services, and emergency room services provided on-site and medical supplies incidental to the services provided to the beneficiary.

B. Virginia Medicaid reimburses Tribal 638 facilities in accordance with the most recently published Federal Register. Encounters/visits are limited to healthcare professionals as approved under the Virginia Medicaid State Plan. A tribal health program selecting to enroll as a FQHC and agreeing to an alternate payment methodology (APM) will be paid using the APM.

C. Alternative Payment Methodology for Tribal Facilities Recognized as FQHCs

1. Outpatient health programs or facilities operated by a Tribe or Tribal organization that choose to be recognized as FQHCs in accordance with Section 1905 (l)(2)(B) of the Social Security Act and the Indian Self-Determination Act (Public Law 93-638) will be paid using an alternative payment methodology (APM) for services, that is the published, all-inclusive rate (AIR). The APM/AIR rate is paid for up to five face-to-face encounters/visits per recipient per day.

2. The individual FQHC must agree to receive the APM. If a Tribal FQHC does not agree to accept the APM, DMAS shall seek accommodation with the FQHC, which may include submitting a state plan amendment to authorize an alternative means of reimbursement for the FQHC.