OFFICE of the INSURANCE COMMISSIONER
WASHINGTON STATE

Notice of Federal and State Legal Protections for American Indian/Alaska Native Enrollees and Indian Health Care Providers

In August 2024, the Office of the Insurance Commissioner published a guidance document to strengthen issuers' compliance with federal and state protections for American Indian/Alaska Native (AI/AN) enrollees and Indian health care providers, by consolidating applicable state and federal statutes and rules in one document.

Since the release of the guidance document, OIC has received several complaints regarding issuers' failure to comply with or correctly interpret the protections referenced in the document. As a result, the purpose of this GovDelivery is to highlight the state and federal laws relevant to the complaints we've received and strengthen issuer compliance.

Issues raised in complaints:

- Refusal to reimburse Indian health providers (IHP) because they are "out-of-network"
- Improper application of enrollee cost-sharing
- Failure to reimburse at required rates
- Delayed reimbursement because IHP did not comply with issuer credentialing requirements.

Relevant provisions:

Right to recovery

Pursuant to 25 U.S.C. § 1621e(a), an Indian health care provider shall have the right to recover from an issuer the reasonable charges billed by the Indian health care

provider in providing health services through the Indian health care provider or, if higher, the highest amount the issuer would pay for care and services that are furnished by providers other than governmental entities, to any individual to the same extent that such individual, or any nongovernmental provider of such services, would be eligible to receive reimbursement for such charges or expenses if— (a) such services had been provided by a nongovernmental provider; and (b) such individual had been required to pay such charges or expenses and did pay such charges or expenses.

Right of Recovery Supersedes Issuer Contracts. No state law or issuer contract provision entered into or renewed after November 23, 1988, shall prevent or hinder the right of recovery.

Qualified Health Plans (QHPs) – Cost Sharing.

For services or items furnished directly by an Indian health care provider or through referral under contract health services, QHPs shall not reduce the payment to an Indian health care provider by the amount of any cost-sharing that would be due from the AI/AN but for the requirement under 42 U.S.C. § 18071(d)(2) that no cost sharing under the plan shall be imposed under the plan for such item or service.

Limited Cost Sharing.

AI/AN people of any income can be enrolled in a QHP limited cost sharing plan, and such individuals shall have no cost sharing for essential health benefits received from an Indian health care provider or through referral under contract health services (currently referred to as “purchase and referred care”) as defined in 25 U.S.C. § 1603(5).The issuer of the plan may not reduce the payment to an Indian health care provider for such services or items. In Washington, these plans are referred to as “Cost-Sharing Reduction (CSR) Tier 3 plan variations.”

Credentialing

“Issuers are not responsible for credentialing providers and facilities that are part of the Indian health system.” Health professionals employed by an Indian health care provider are not required to have a Washington state license if they have a license in another state and are performing the services described in the contract or compact of the Tribal health program under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

Licensure of Indian Health Care Provider Facilities.

A Federal health care program [e.g., Medicare, Medicaid, Children's Health Insurance Program, Veterans Administration, Qualified Health Plans] must accept an entity that is operated by the Indian Health Service, an Indian Tribe, Tribal organization, or urban Indian organization as a provider eligible for reimbursement of health care services furnished to an AI/AN on the same basis as any other qualified provider under the program if the entity meets generally applicable state or other requirements for participation as a provider of health care services under the program.

Claims Format

All issuers are prohibited from denying a claim for benefits submitted by an Indian health care provider based on the format in which the claim is submitted if such format complies with the format required for submission of claims under title XVIII of the Social Security Act [42 U.S.C. 1395 et. seq.] or recognized under section 1175 of such Act [42 U.S.C. § 1320d-4].

Payer of Last Resort

Health programs operated by the Indian Health Service, Indian Tribes, Tribal organizations, and Urban Indian organizations (as those terms are defined in § 4 of the Indian Health Care Improvement Act (25 U.S.C. § 1603)) shall be the payer of last resort for services provided by such Service, Tribes, or organizations to individuals eligible for services through such programs, notwithstanding any federal, state, or local law to the contrary. Therefore, all alternate resources that are available and accessible such as Medicare, Medicaid, SCHIP, private insurance, etc. are used before Indian health care provider's funds can be expended.

For more information regarding issuer obligations under state and federal law, please see Federal and State Legal Protections for American Indian/Alaska Native Enrollees and Indian Health Care Providers.