



STATE OF WASHINGTON

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

Health & Recovery Services Administration
P.O. Box 45502, Olympia, Washington 98504-5502

December 18, 2007

Dear Tribal Leader:

As you are aware, Centers for Medicare and Medicaid Services (CMS) has issued the deferral for CD services for encounter payments to non-natives. This deferral affects all payments made from October 1, 2006 through March 31, 2007 and is about \$2.0M. At this time, CMS has agreed not to defer reimbursements beyond this time period since the state and the Tribes are working towards a resolution.

The impact of this deferral is that the state is unable to earn the federal match for services provided and billed for by tribal chemical dependency treatment programs for non-natives for the deferral period. The issue CMS has with the current reimbursement methodology is that it should be based on costs associated with each tribal facility which requires the state to certify and reconcile payments versus costs for each facility. This is the Certified Public Expenditures (CPE) methodology. However, the rates used to reimburse the tribes currently are based on IHS encounter rates so they do not relate back to the actual service cost of each specific tribal facility.

DSHS has requested a six month period to confer, discuss and work toward a resolution on this issue. Although we have not received a formal response on this timeline, we are working toward having a revised reimbursement methodology implemented by **April 1, 2008**. Again, DSHS intends to continue business as usual during this six month period so that a mutually agreed upon process between the state and Tribes is identified and approved by CMS.

In order to resolve this issue, DSHS convened two workgroups on November 27th and December 10th for discussion of viable options. Included is a recap of the options the workgroup explored along with considerations to address advantages or disadvantages.

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As discussed at the last workgroup meeting, please share and discuss this information and feel free to contact Thuy Hua-Ly at 360-725-1855, hualytn@dshswa.gov if you have any questions or need further information. Again, the consultation for this issue is scheduled for **January 9, 2008** at Cherry Street Plaza, Olympia from 1:00 to 4:00 p.m.

Sincerely,



Doug Porter, Assistant Secretary
Health & Recovery Services Administration

Attachments

cc: Doug Allen
Thuy Hua-Ly
Roger Gantz
Colleen Cawston
Deborah Sosa
Sandra Mena
John Taylor

CMS Deferral of CD Services to Non-Natives- Issue Paper

The first four options are considered as interim options to resolve the deferral while option #5 seeks funding from the legislature as a longer term solution to the issue.

1. **Intergovernmental Transactions (IGT):** Tribes to send match dollars for CD services to Office of State Treasurer (OST) and state will draw federal match. DSHS will reimburse the tribes by sending both tribal match dollars and federal match. We can use Electronic Funds Transfer (EFT) to expedite the process.

Considerations:

- Retains encounter rate for CD services which is typically higher than fee for service rate;
- DSHS would not have to open its State Plan Amendment (SPA) which would present CMS with the opportunity to review the Mental Health, Dental or Medical encounter rates.
- A new methodology will require resources to identify and implement a new reimbursement methodology from both tribes and state;
- This methodology would require tribes to send the local match dollars to the state before the state can draw the federal match for these services.

Proposal: Tribes submit billings into MMIS for CD services for non-natives. At the same time, tribes send the state the local match for these billings into pre-determined accounts with the OST. State draws down federal match and reimburses the tribes for both the local match and the federal share.

- Is there possible tribal audit issues based on the fact that the state is “holding” tribal dollars? Response: We believe this will not be an issue if the process is well documented. Additionally, the IGT transaction is defined by the federal government and auditor will audit against that standard.

2. **Intergovernmental Transactions (IGT) - Hybrid:** Tribes create specific account outside of the Office of State Treasurer (OST). State will use the monies and draw federal match for appropriate services. DSHS will reimburse the tribes by sending both tribal match dollars and federal match.

Considerations:

- Retains encounter rate for CD services which is typically higher than fee for service rate;
- DSHS would not have to open its State Plan Amendment (SPA) which would present CMS with the opportunity to review the Mental Health, Dental or Medical encounter rates.
- A new methodology will require resources to identify and implement a new reimbursement methodology from both tribes and state;
- This methodology would require tribes to send the local match dollars to an account outside the state before the state can draw the federal match for these

services. Proposal: Tribes submit billings into MMIS for CD services for non-natives. At the same time, tribes send the local match for these billings into pre-determined accounts with a financial institution outside the Office of State Treasurer (OST). State draws down federal match and reimburses the tribes for the federal share and the tribe withdraws the local match from the financial institution. Will CMS consider this an appropriate match process criterion for IGT? Response: Per CMS, the IGT model requires that “the match transferred from tribal entity must be under control of the state.”

Conclusion:

Based on the above analysis this option is **not** viable as it would violate federal rule. See 42CFR433.51(b).

3. **Use of In-Kind for Federal Match:** Tribes use in-kind matches for CD services which will allow DSHS to draw federal match. DSHS will reimburse the tribes by sending only the federal match portion.

Considerations:

- Tribes do not have to send monies to the state for match;
- A new methodology will requires resources to identify and implement a new reimbursement methodology from both tribes and state;
- Requirements for in-kind determination? Response: Per CMS, in-kind match is not allowable for Medicaid.

Conclusion:

Based on the above analysis this option is **not** viable as it would violate federal rule. See 42CFR433.51(b).

4. **State Create Special Account for Match:** State uses Medicaid data from MMIS to determine the amount of match for a tribe. State uses state dollar appropriation as a match for CD services and draws down federal match. State then reimburses the tribes for the federal share of the CD services.

Considerations:

- Tribes would not have to send monies to the state for match;
- Are there state funds from DSHS available to use as a match? Response: Funds are appropriated from the legislature to each of the DSHS programs to provide/perform necessary services unique to that program’s requirements. Therefore, the only state funds available for CD services are within DASA. The next step is to determine if DASA has available state funding to use as a match to draw down federal dollars. In examining DASA’s appropriation and expenditures, DASA does not have an estimated \$4.0M/fiscal year of state funds that are not used for other CD services so that it can use this to draw the federal

match. The \$4.0 is estimated from the \$2.0M deferral for six month period. CMS requires that a dollar is only used for federal match once.

- Will CMS consider this appropriate match process? Response: This would require the state to use the same state dollars to draw down federal match for different services. This is specifically prohibited under IGT as “recycling”.

Conclusion:

Based on the above analysis this option is **not** viable as it would violate federal rule. See 42CFR433.51.

The following recommendation is a long-term solution since it would involve requesting the local match dollars from the legislature.

5. **DSHS/DASA submits a budget request:** DSHS submits budget request for 2009/2011 biennium to obtain funding for local match of CD services. This can represent the total projected need of local match dollars for all non-native encounters for CD services; or the request can represent the funding need of local match dollars for CD services for non-natives that fit into the clinical family model definition.

Considerations:

- Retains encounter rate for CD services which is typically higher than fee for service rate;
- DSHS would not have to open its State Plan Amendment (SPA) which would present CMS with the opportunity to review the Mental Health, Dental or Medical encounter rates.
- This would require legislative support;
- Funding would not be available until July 1, 2009 upon approval by the legislature.

**DASA – HRSA- Workgroup
Deferral conversation
December 10, 2007**

Introductions

Invocation- Phyllis Grant – Spokane

Shared decision from last meeting: 4 proposals and 1 long term

1-IGT

Tribe sends funds to Office of the State Treasurer/ EFT state draws down match and submits claims to CMS

Pros: Would not have to open state plan

Cons: Tribes would have to send funds to Office of State Treasurer (OST)

Process- Tribe deposit to a special dedicated account for each tribe account set up with OST. State would draw down the match. Then submit to CMS for reimbursement. Data can be drawn from MMIS. Would need joint decision as to how often/frequency. Are there audit issues from the tribal perspective?

2-Hybrid IGT

As above but, funds would be put into a dedicated account by the tribe-not with the state.

CONS: CMS says the money has to be drawn down by the state. Money needs to be in "state possession". Everything else is the same as IGT above.

3-Use of "in kind"

Tribes would certify in-kind contributions.

Pro: Do not have to send monies back and forth – between state and tribe. A new process would need to be developed.

Con: "In kind certification" is not allowed for Medicaid grants according to CMS. "In kind" certification is available for other federal grants. Treva will find the CFR regarding the restriction. CMS is pushing to request a resolution soon.

4-Use of state rotating funds

Tribe requests the state use any available dollars that are not used for federal match. Tribes request the state seek appropriation of available \$'s to be used for state match and then replaced when CMS returns the payment.

Are there restrictions on state dollars? State dollars cannot be used to match more than one draw down – need to explain to CMS the process.

Is there any flexibility in state dollars?

Two issues-

- (1) Are there available dollars to provide a match;
State dollars are only available once to match. Cannot recycle dollars. Hold harmless means that the state cannot reimburse to a provider and require the provider to reimburse to the state a portion of the reimbursement. (Hold Harmless provision)
- (2) Are there available state dollars? Dollars from legislature are appropriated to DSHS with restrictions.
- (3) Would the state be in violation of the Appropriations act if they used available state dollars for the non-native encounter match? Are there ANY dollars available?

5-Request an appropriation

- Time line longer than what CMS will allow for current resolution of the deferral. Could be a future strategy to address the issue long term.
- Utilize the clinical family definition.
- Request funds to provide match for CD services to any NON-natives by tribes.
- Request funds to provide match for CD services to any NON-natives by tribes-utilizing the clinical family definition.
- There could be 2 approaches to identify the dollar need.
- Utilize current billing as a baseline.
- Question as to how to estimate the utilization?
- Current expenditures might not reflect the need due to tribes not being able to provide services under the current process and funding options.
- Get an appropriation for non-natives using the clinical family definition.
- Would tribes increase services?
- Need to include the option of tribal expansion dollars to the budget request.

Thuy- Commitment to send out the Encounter/proposal. It will go out the 17/18 December. Return on or around the COB on January 3rd. Back to tribes on the 5th. Document will send out electronically. Include timeline in e-mail.

Agenda for January meeting-January 8th

DASA Agenda

ADATSA update

Prevention quarterly report

Prevention changes

Block Grant – June

SAMHSA- Dr. Wesley Clark

IPAC January 10th– 8:30

CMS MAM-

Send consultation reminder January 8th, 1-4 CSP

Send out new calendar schedule