



PUEBLO OF SANTA ANA

January 29, 2020

State of New Mexico, Human Services Department
Office of the Secretary
PO Box 2348
Santa Fe, NM 87504

RE: Request for Tribal Comments on TN#20-27: Federally Qualified Health Center (FQHC) Designation

Secretary Scrase,

Regarding the New Mexico Human Services Department's (HSD) call for advice and comments in Tribal Notification (TN) #20-27 concerning Federally Qualified Health Center (FQHC) Designation, our leadership is aware of the following communication timeline:

- a) In January 2017, the Center for Medicare and Medicaid Services (CMS) issued a Frequently Asked Questions (FAQ) reference to clarify that Indian Health Services (IHS) and tribal Indian Health Care Providers (IHCP) should NOT submit for Medicaid reimbursement for services provided outside the "four walls" of a facility (e.g. for services provided in schools, community centers, etc.). Recognizing this would require changes for many tribal programs, CMS established January 31, 2021 as the deadline at which this change would be in effect, provided insight suggesting FQHCs are not limited to the "four walls" mandate, and encouraging tribal IHCPs to work with their respective state authorities to move forward.
- b) In anticipation of this deadline, HSD released TN #20-27 on December 31, 2020 and includes language for a State Plan Amendment (SPA) #20-0022 that outlines the following:
 - a. IHCPs under P.L. 93-638 Title I of Title V contracts for health care services may option to designate themselves as Tribal FQHCs; and
 - b. Tribal FQHCs will be reimbursed using an alternative payment method (APM) equivalent to the Office of Management and Budget (OMB)¹ rate published annually (currently \$519 per visit)
- c) In response to national difficulties prompted by the COVID-19 public health emergency (PHE), CMS released an Informational Bulletin on January 15, 2021 that extended the grace period to October 31, 2021 for IHCPs to make "an informed decision" on whether to pursue Tribal FQHC status. This bulletin also extends the same timeframe to IHS-operated facilities to provide "additional time to work toward a solution addressing compliance with the 'four walls' requirement."²
- d) The deadline for tribal input and response to TN #20-27 is January 31, 2021.

¹ The OMB rate is also known as the All Inclusive Rate or AIR.

² *CMCS Informational Bulletin*, "Extension of Grace Period Related to the 'Four Walls' Requirement under 42 CFR § 440.90 for Indian Health Service and Tribal Facilities," (January 15, 2021).



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With this background established and on behalf of the Governing Body and leadership for the Pueblo of Santa Ana, I respectfully submit the following advice and commentary for your consideration:

- 1) The Pueblo of Santa Ana **enthusiastically endorses the language provided in SPA #20-0022 and applauds the initiative of the HSD for engaging changes that will benefit tribal programs. We suggest the SPA move forward for public comment and implementation as planned.** The extension of the CMS grace period to October 31, 2021 need not delay this step as SPA #20-0022 provides tribal programs with the best “available” options for reimbursement and stands separate from each tribe’s need to assess our own programs and decide if FQHC designation is advantageous.
- 2) The Pueblo of Santa Ana **suggests the HSD engage several tribal information sessions in the 1st and 2nd QTRs of CY2021 for the purpose of helping tribal programs understand key differences between designation and billing as an IHCP clinic services provider or a Tribal FQHC.** Our brief interactions with staff from other tribal programs suggests some major differences between clinic service providers and FQHCs, such as cost reporting and the inclusion/exclusion of services such as lab, x-ray, optometry, or physical therapy in the OMB reimbursement for a visit/claim, are not well understood. Consequently, program leaders may be at a disadvantage that the State can help remedy in these sessions.
- 3) **Perhaps most importantly, The Pueblo of Santa Ana encourages the HSD to rapidly explore and pursue a solution to the “four walls” mandate with IHS-operated facilities AND to extend these options to tribal programs as an alternative to Tribal FQHC designation, if applicable.** On page 3 of their Informational Bulletin, CMS distinctly identifies October 31, 2021 as a deadline that is also applicable to IHS-operated facilities. However, as federal entities, IHS facilities cannot be designated as FQHCs and consequently, any compliance solution for IHS must instead focus on either a billing exception to the “four walls” mandate within the State’s Medicaid plan for IHS-operated facilities, or explicit direction and guidance provided to IHS-operated facilities to cease billing for disqualified claims after this date. To the extent the State explores an exception to the “four walls” mandate as a solution for compliance, this approach would clearly favor IHS-operated facilities in that it would specifically address the “four walls” issue without requiring program adjustment to the differing reimbursement structure of FQHC designation. Given that the Indian Health Care Improvement Act (IHCA) calls for parity in treatment of tribal IHCPs on the same level as our IHS counterparts, we trust the HSD will immediately extend any related advantageous initiatives to tribal programs as solution options as well.

In closing, we value and respect our partnership with the State of New Mexico and truly appreciate your consideration of our advice. If I can be of any additional assistance, please contact me at your convenience at 505-771-6759 or Edward.Ackron@santaana-nsn.gov.

Respectfully Submitted,

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Pueblo of Santa Ana