

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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CMCS Informational Bulletin

DATE: October 4, 2021

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SUBJECT: Further Extension of Grace Period Related to the “Four Walls” Requirement under 42 C.F.R. § 440.90 for Indian Health Service and Tribal Facilities to Nine Months after the COVID-19 PHE Ends

The Center for Medicaid and CHIP Services (CMCS) is issuing this CMCS Informational Bulletin (CIB) to announce that the Centers for Medicare & Medicaid Services (CMS) is further extending a grace period previously granted to Indian Health Service (IHS) facilities, including those facilities operated by Tribes and Tribal organizations under the Indian Self-Determination and Education Assistance Act (ISDEAA), Pub. L. No. 93-638.¹ The grace period permits IHS and Tribal facilities to continue to claim Medicaid reimbursement under the clinic services benefit at 42 C.F.R. § 440.90 (including at the IHS All Inclusive Rate (AIR)) for services provided outside of the “four walls” of the facility. On January 15, 2021, due to the urgent need to ensure continued access to services provided by IHS and Tribal facilities during the COVID-19 public health emergency (PHE), and the need for states, IHS, and Tribes to focus limited resources on addressing the COVID-19 PHE, CMS issued a CIB extending the grace period from January 30, 2021 to October 31, 2021 (January 15, 2021 CIB), available on Medicaid.gov at <https://www.medicare.gov/federal-policy-guidance/downloads/cib11421.pdf>.

The ongoing burden of the COVID-19 PHE continues to place additional strain on state and Tribal resources and continues to impede states’ and Tribes’ ability to complete the work needed to make an informed decision about an option described in the January 15, 2021 CIB (referred to in that CIB as “the Tribal FQHC option”) and take steps to effectuate that option.² Therefore, CMS is further extending this grace period for states and Tribal facilities to **nine months after the COVID-19 PHE ends**. CMS is also further extending the grace period for IHS-operated facilities for the same time period, to give IHS and states additional time to work toward a solution addressing compliance with the “four walls” requirement for IHS-operated facilities.

¹ In this document, we refer to facilities operated by Tribes and Tribal organizations under the ISDEAA as “Tribal facilities.”

² The Tribal FQHC option allows a Tribal facility to convert to FQHC status and states can adopt the IHS AIR as an Alternative Payment Methodology (APM) under section 1902(bb)(6) of the Social Security Act for any Tribal facilities that are FQHCs, in lieu of the prospective payment system rate. FQHCs are not affected by the four walls limitation so any services furnished outside the facility may be reimbursed at the IHS AIR.

Additional information on the “Four Walls” requirement, the Tribal FQHC option, and the related grace period can be found in the January 15, 2021 CIB.

Technical Assistance

We encourage states needing technical assistance to contact their CMCS state lead and Tribes needing technical assistance to contact their CMCS Native American Contact. These CMS contacts are available to provide any additional technical assistance needed in determining whether to adopt the Tribal FQHC option discussed in the January 15, 2021 CIB. For more information about the four walls limitation and the grace period discussed in this CIB, please contact Kitty Marx, Director, Division of Tribal Affairs, kitty.marx@cms.hhs.gov.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way, unless specifically incorporated into a contract. This document is intended only to provide clarity to the public regarding existing requirements under the law.