

Oklahoma Health Care Authority

The Oklahoma Health Care Authority (OHCA) values your feedback and input. It is very important that you provide your comments regarding the proposed rule change by the comment due date. Comments can be submitted on the OHCA's [Proposed Changes Blog](#).

OHCA COMMENT DUE DATE: March 3, 2022

The proposed policy changes are currently in effect as Emergency Rules and must be promulgated as Permanent Rules. The proposed policy was presented at the July 6, 2021, Tribal Consultation. Additionally, this proposal was presented to the Medical Advisory Committee on September 9, 2021. Furthermore, this proposal will be presented at a Public Hearing scheduled for March 8, 2022. Finally, the proposed changes are scheduled to be presented as permanent rules to the OHCA Board of Directors on March 16, 2022.

REFERENCE: APA WF 21-11

Indian Health Service, Tribal and Urban Indian (I/T/U) Shared Savings Program – The proposed new rules comply with Senate Bill 434 (SB 434), which allows the Oklahoma Health Care Authority (OHCA) to create a shared savings program and shared savings revolving fund with the I/T/U.

LEGAL AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; Senate Bill 434

RULE IMPACT STATEMENT:

**STATE OF OKLAHOMA
OKLAHOMA HEALTH CARE AUTHORITY**

SUBJECT: Rule Impact Statement
APA WF # 21-11

A. Brief description of the purpose of the rule:

The proposed policy complies with SB 434, which directs the Oklahoma Health Care Authority (OHCA) to create a shared savings program and shared savings revolving fund with the Indian Health Service, tribes and tribal organizations, or urban Indian organizations (I/T/U). The proposed rules outline that any non-I/T/U Medicaid provider, who treats an American Indian or Alaska Native (AI/AN) Medicaid beneficiary, is eligible for a 100% federal reimbursement match rate, if the referral was from an I/T/U facility. Furthermore, the rules establish that the OHCA is to distribute up to 50% of the savings from the I/T/U shared savings program to any participating I/T/U facilities. Any remaining savings will be deposited into the I/T/U shared savings revolving fund. Finally, this change will prohibit I/T/U shared savings revolving funds to be used to replace other general revenues funded by the legislature.

- B. A description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the cost of the proposed rule, and any information on cost impacts received by the agency from any private or public entities:

The class of persons most affected by the proposed rule will be AI/AN members and non-I/T/U providers who are referred to provide services from an I/T/U facility/provider. The proposed change will help with care coordination between I/T/U and non-I/T/U providers and ensure quality of care to tribal members.

- C. A description of the classes of persons who will benefit from the proposed rule:

The proposed rule changes will benefit I/T/U providers who will now receive quarterly distributions for participating in the shared savings program. The proposed rules will allow OHCA to draw down 100% federal matching funds if a service was provided by a non-I/T/U Medicaid provider treating an American Indian or Alaska Native (AI/AN) Medicaid member and there was a referral from an I/T/U facility

- D. A description of the probable economic impact of the proposed rule upon the affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change:

There is no probable economic impact, and there are no fee changes associated with the rule change for the above classes of persons or any political subdivision.

- E. The probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule, and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency:

The budget impact is pending. There will be a shift from program to administrative budget. Currently, there is not enough savings to share savings with the tribal clinics. But as the program grows over the next few years the tribes and OHCA could see savings from the program. This may take a year or two to grow to that level.

- F. A determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:

The proposed rule changes will not have any economic impact on any political subdivisions. The proposed rule changes will not have an economic impact on any political subdivision or require their cooperation in implementing or enforcing the rule changes.

- G. A determination of whether implementation of the proposed rule will have an adverse effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:

The agency does not anticipate that the proposed rule changes will have an adverse effect on small businesses.

- H. An explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or non-regulatory methods or less intrusive methods for achieving the purpose of the proposed rule:

The agency has taken measures to determine that there is no less costly or non-regulatory method or less intrusive method for achieving the purpose of the proposed rule.

- I. A determination of the effect of the proposed rule on the public health, safety, and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety, and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk:

The proposed rule should not have any effect on the public health, safety or environment. The proposed rule is not designed to reduce significant risks to the public health, safety or environment.

- J. A determination of any detrimental effect on the public health, safety, and environment if the proposed rule is not implemented:

The agency does not believe there is a detrimental effect on the public health and safety if the rule is not passed. The agency believes that the approval of this rule change will have a positive effect for tribal members to have easier access to health care services.

- K. The date the rule impact statement was prepared and if modified, the date modified:

Prepared: July 27, 2021
Modified: August 17, 2021

RULE TEXT:

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE**

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

**PART 110. INDIAN HEALTH SERVICES, TRIBAL PROGRAMS, AND
URBAN INDIAN CLINICS (I/T/Us)**

317:30-5-1101. I/T/U Shared Savings Program

(a) Description. In accordance with state and federal law, the ITU Shared Savings Program is a program that direct the reinvestment of any savings to the Oklahoma Health Care Authority (OHCA) generated by enhanced federal matching authorized under Section 1905(b) of the Social

Security Act at a rate of one hundred percent (100%) for covered services received through participating Indian Health Service, Tribal and Urban Indian (I/T/U) facilities.

(1) **Eligibility.** Authorized services provided by a non-I/T/U Medicaid provider to an American Indian or Alaska Native (AI/AN) Medicaid member as a result of a referral from an I/T/U facility provider may be eligible for the enhanced federal matching rate of one hundred percent (100%).

(2) **Distribution criteria.** OHCA will distribute up to fifty percent (50%) of any savings that result from the I/T/U Shared Savings Program to the referring I/T/U, but only after administrative costs incurred by OHCA in implementing the program have been fully satisfied. Distributions issued will ensure the following:

(A) Distributions to participating I/T/U facilities will be used to increase care coordination and to support health care initiatives for AI/AN populations;

(B) OHCA will deposit any shared savings that remain after administrative costs have been fully paid, and after distributions have been made to participating I/T/U facilities, into the I/T/U Shared Savings Revolving Fund for the purpose of increasing Medicaid provider rates;

(C) Monies in the fund will not be used to replace other general revenues appropriated and funded by the Oklahoma Legislature or other revenues used to support Medicaid; or

(D) OHCA will make distributions on a quarterly basis to participating I/T/U facilities based on claims data. The calculation will include the paid claims from the non-ITU provider that a member was referred to by an I/T/U. The referring ITU provider will need to be listed on the claim, and there must be an active Care Coordination Agreement (CCA) on file with OHCA. A CCA must be executed between the I/T/U facility and the non-I/T/U provider. A CCA must include, but not limited to the following:

(i) The I/T/U facility provider providing a request for specific services by electronic or other verifiable means and relevant information about the practitioner's member to the non-I/T/U provider;

(ii) The non-I/T/U provider sending information about the care the non-I/T/U provider provides to the patient including the results of any screening, diagnostic or treatment procedures, to the I/T/U facility provider;

(iii) The I/T/U facility provider continuing to assume responsibility for the member's care by assessing the information and taking appropriate action including, when necessary, furnishing or requesting additional services; and

(iv) The I/T/U facility incorporating the member's information in the medical record through the statewide health information exchange or other agreed-upon means.

(b) **I/T/U Shared Savings Revolving Fund.** A revolving fund for OHCA will be designated as the "I/T/U Shared Savings Revolving Fund". All monies accruing to the credit of the fund will be budgeted and expended by OHCA and will consist of:

(1) All monies received by OHCA as pursuant to Title 63 Section 5061.2 of the Oklahoma Statutes, and as otherwise specified or authorized by other state and federal laws;

(2) All monies accruing to the credit of the fund are appropriated and will be budgeted and expended by OHCA to increase Medicaid provider rates, unless otherwise provided by state and federal law; and

(3) Expenditures from the fund will be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services (OMES) for approval and payment.

(c) Report Criteria. An annual report will be prepared by the OHCA's Chief Financial Officer (CFO) and will be submitted to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives no later than thirty (30) days following the end of each state fiscal year. The annual report will account for:

- (1) The savings realized by the OHCA as a result of the I/T/U Shared Savings Program;
- (2) The administrative costs incurred by the OHCA as a result of the I/T/U Shared Savings Program;
- (3) The monies distributed to participating I/T/U facilities as a result of I/T/U Shared Savings Program including, but not limited to, a summary of all specific distributions;
- (4) The balance of savings realized by the OHCA as a result of the I/T/U Shared Savings Program and accruing to the credit of the fund after payment of administrative costs and distributions to participating I/T/U facilities; and
- (5) The monies expended on increasing Medicaid provider rates including, but not limited to, identification of the types of providers affected and the percentage by which the providers' rates were increased.