

**WHITE EARTH RESERVATION BUSINESS COMMITTEE
WHITE EARTH BAND OF CHIPPEWA INDIANS**

Resolution No. 001-24-022

WHEREAS, the White Earth Reservation Business Committee is the duly elected governing body of the White Earth Reservation pursuant to Article VI, Section 1, of the revised constitution of the Minnesota Chippewa Tribe, as amended, and organized under Section 16, of the Act of June 18, 1934 (48 Stat. 984), and

WHEREAS, the White Earth Reservation Business Committee is the duly authorized governing body of the White Earth Band, and

WHEREAS, the White Earth Reservation Business Committee is charged with the responsibility of protecting and advocating for the health and welfare of White Earth Band members within the White Earth Reservation boundaries, and

WHEREAS, The US government has a trust responsibility to provide health care to members of federally recognized tribes, a responsibility filled since 1955 by the Indian Health Services, and

WHEREAS, the Centers for Medicare & Medicaid Services ("CMS") is the federal agency charged with implementing Medicare and Medicaid and is a key component of the trust responsibility, and in that capacity it should be working to improve delivery systems for AI/AN's by increasing access to care, strengthening continuity of care, and improving population health, and

WHEREAS, the Indian Health Care Improvement Act ("IHCA") – a Declaration of national Indian Health Policy - states: "Congress declares that it is the policy of this Nation, in fulfillment of its special trust responsibilities and legal obligations to Indians to ensure the highest possible health status for Indians and urban Indians and to provide all resources necessary to effect that policy" "...to ensure maximum Indian participation in the direction of health care services so as to render the persons administering such services and the services themselves more responsive to the needs and desires of Indian communities." While CMS often looks to the Social Security Act for authority, the historic and complex body of federal Indian law and case law applies throughout the federal government to all agencies, and

WHEREAS, The IHCA has been periodically reauthorized and amended since 1976, but in 2010, the law was comprehensively amended and authorized as a permanent law of the United States. Throughout its history, the IHCA has contained an unequivocal recognition of the United States' responsibility to improve the

health of Indian people, to provide federal health services to this population, and to foster maximum Indian participation in health care program management, and

WHEREAS, CMS has interpreted the federal definition of “Clinic Services” to include only those services provided within the “four walls” of a facility. The negative result of the enforcement of this policy would dramatically impact the delivery of critically needed services and supports to AI/AN’s, and

WHEREAS, CMS extended a grace period to Indian Health Services facilities, including those operated by Tribes under the Indian Self-Determination and Education Assistance Act (ISDEAA,) Pub.L. No. 93-638 for billing Medicaid for clinic based services. During the grace period, I.H.S. and tribal programs may continue to claim Medicaid reimbursement under the clinic services benefit at 42 C.F.R. § 440.90 for services provided outside of the “four walls” of the facility, as originally congressionally intended. That grace period is scheduled to end February 11, 2025, and

WHEREAS, there are limitations within the CMS interpretation of “Four Walls” that would be detrimental to Indian Health Care. In 2017, CMS issued a document clarifying that “clinic services” include only services that are within the scope of the “clinic services” benefit and that are either furnished within the four walls of an enrolled Medicaid clinic or are furnished off-site to homeless individuals by clinic personnel. Consensus among tribal leaders and public health professionals is clear that the interpretation by CMS is incorrect and not only contrary to public health, but contrary to the National Indian Health Policy that is found within the Indian Health Care Improvement Act (IHCA, PL 94-437), and

WHEREAS, the Tribal Executive Committee (“TEC”) of the Minnesota Chippewa Tribe has the authority to make final interpretations of the Constitution of the Minnesota Chippewa Tribe, and

WHEREAS, the TEC interprets the language of the Constitution to mean that the delegation of authority is given to the Reservation Business Committee (also known as the Tribal Council), and

WHEREAS, the Minnesota Chippewa Tribe Constitution, Tribal Interpretation 8-94, states in Article VI: Section 1. Each of the Reservation Business Committee shall, in accordance with applicable laws or regulations of the Department of the Interior, have the following powers:

(e) To delegate to committees, officers, employees or cooperative associations

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I.H.S. and Tribal Provider Access to Medicaid Clinical Services Benefit for Services Provided Outside of the "Four Walls" of the Facility, found at 42 C.F.R. § 440.90

Any of the foregoing authorities, reserving the right to review any action
Taken by virtue of such delegated authorities.


THEREFORE, BE IT RESOLVED, that the White Earth Reservation Business Committee hereby supports a regulatory clarification that upholds Medicaid claiming for the clinic services benefit at 42 C.F.R. § 440.90 for services provided outside of the "four walls" of the facility, as originally congressionally intended, in order to provide tribal member access to care and improving population health, now

BE IT FURHTER RESOLVED that the White Earth Reservation Business Committee hereby authorizes elected leadership or their designate testify on their behalf for the above stated purpose.

We do hereby certify that the foregoing resolution was adopted by a vote of 4 for, 0 against, 0 silent, a quorum being present at a special meeting of the White Earth Reservation Business Committee held on February 6, 2024 in White Earth, Minnesota.



Michael A. Fairbanks, Chairman



Michael Laroque, Secretary/Treasurer