
# Third-Party Revenues

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# Governmental Revenue Sources

**IHS (ISDEA Contracts and Compacts)**

**CMS (Medicaid/Medicare)**

**VA, DoD (Army, USCG)**

**Federal and State Grants and Programs**

# Private Third Party Revenue Sources

**Health Plans**

**Tortfeasors (trauma cases)**

**Self-Pay (non-beneficiaries)**

# IHCIA : First Step

- **Indian Health Care Improvement Act (IHCIA) of 1976**

- 25 U.S.C. § 1641(d) allowed tribal health programs to directly bill and receive reimbursement from Medicaid and Medicare for health care services provided.

# IHCIA Section 206 : Second Step

**1988 IHCIA amendments allow the United States to recover health care expenses for AN/AIs from health plans and responsible third parties, similar to other federal medical cost recovery statutes**:

**REIMBURSEMENT FROM CERTAIN THIRD PARTIES OF COSTS OF HEALTH SERVICES**

(a) *The United States shall have the right to recover the reasonable expenses* incurred by the Secretary in providing health services, through the Service, to any individual to the same extent that such individual, or any nongovernmental provider of such services, would be eligible to receive reimbursement or indemnification for such expenses if—

(1) such services had been provided by a nongovernmental provider, and

(2) such individual had been required to pay such expenses and did pay such expenses . . .

# Highlights of the 1988 Amendment

- Only applied to the United States (not Tribes— yet)
- The United States' right of recovery could not be hindered by State law or by an insurance contract
- Right of recovery was independent, i.e., the United States could recover directly from insurance companies and tortfeasors whether or not the patient had settled or been paid

# Why?

- To combat the “well-documented insufficiency of resources” for Indian health care  S. Rep. No. 100-508, at 15 (1988).
- Many insurers or workers’ compensation policies had exclusionary clauses to avoid paying a claim because beneficiaries treated at IHS facilities are not required to pay for services
- Congress wanted IHS facilities to be treated like private facilities in terms of reimbursement and in light of “scarce IHS funds.” House Report, H. Rep. 100-222, pt. 2 at 19 (1987); S. Rep. No. 100-508, at 15 (1988).

# 1992 Amendment to Section 206

**Federal right of recovery extended to Tribes and Tribal organizations**

- Congress wanted to "clarif[y] that tribal government health contractors or tribal contractors have the same right to recover against private insurance companies that IHS enjoys."
- Some insurance companies refused to pay Tribes, and certain IHS officials had questioned the Tribal right of recovery under the 1988 Amendments.
- Some States and State political subdivisions refused to pay for health care provided by Tribes. (S. Rep. 102-392, at 21 (1992))

# 2010 Amendments to Section 206

**Expanded the tribal right of recovery further:**

"[T]he United States, an Indian tribe, or [a] tribal organization **shall have the right to recover from an insurance company . . . or any other responsible or liable third party … the reasonable charges billed** … in providing health services …" (25 U.S.C. 1621e(a)).

# 2010 Amendments Summary

1. **Allow recover of "reasonable charges billed" to insurers, HMOs, employee benefit plans, tortfeasors (health plans) and from "any other responsible or liable third party."**
2. **No deduction for "patient cost sharing" (can be 20% to 60%)**
3. **Preempts any contrary State or local law or insurance contract or health plan provision.**

# 2010 Amendments Summary

4. **Allows direct civil action against the responsible third parties, whether health plans or individuals.**
5. **Gives costs and attorney's fees to the Tribe or Tribal organization as prevailing party (but not to the defendant if the defendant prevails)**
6. **Allows recovery of the "reasonable value" of health services from tortfeasors per the FMCRA.**

# 2010 Amendments Summary

7. **Precludes health plans from instituting claims filing requirements for Tribal programs that differ from the Social Security Act.**
8. **Six year statute of limitations for filing plan claims and a three year statute for tort claims.**
9. **The Tribal right of recovery is independent, like the Government's right of recovery.**

# Why so many amendments?

- **Congress enacts legislation to help provide health services to AN/AI beneficiaries**
- **Insurance companies and health plans continue to avoid or cap payments, forcing Congress to act**
- **This occurs over and over**

# Now, How Do We Get the Money?

**Hugely different approach from government budgeting, and is foreign to some IHS and Tribal programs.**

1. **Direct billing to health plans**
2. **Entering contracts with health plans**
3. **Collecting from tortfeasors**
4. **Sue the b*****ds.**

# Contracting vs. Billing

**Pros of contracting:**

1. **Predictability and administrative convenience**
2. **Smoother recovery process**
3. **“Steering” by the health plan**
4. **Section 206 gives negotiating leverage.**

# Contracting vs. Billing

**Cons of contracting:**

1. **Discounted rates: 80-85% of charges is the norm.**
2. **Each health plan has its own quirks and procedures.**
3. **Need to monitor payments and appeal denials.**
4. **Contracts are difficult to understand and negotiation is specialized.**

# Steps for Successful Third Party Collections

1. **Capture the information from the patient at intake.**
   a. **Insurance cards (primary and secondary)**
   b. **Accident/injury form**
2. **Proper charting by the providers.**
3. **Proper coding by the coders.**
4. **Proper billing by the billers.**
5. **Review received payments for accuracy and appeal if needed.**

# Traps for the Unwary

1. **Constant training and compliance monitoring needed.**
2. **Codes and coverage are constantly changing.**
3. **Outsourcing is tempting but can be problematic.**
4. **High personnel turnover rate.**
5. **Diplomacy with patients**

# Tortfeasors

1. **Direct claims against the responsible party and the party's insurance company.**
2. **State hospital liens can be used to secure the claim.**
3. **Can intervene in civil actions or bring a direct lawsuit.**
4. **Often requires negotiations with plaintiffs' counsel.**
5. **Potential conflicts with beneficiaries.**

# And then there are lawsuits . . .

1. **Litigating against insurance companies is expensive, difficult, time-consuming, ugly …. and potentially highly profitable.**
2. **Section 206 has some quirks and overly-complicated language.**
3. **Do not underestimate the costs of discovery and damage calculations.**

# …and lawsuits (con't)

4. **Health plans are risk adverse and will prefer to settle rather than go to trial.**
5. **But they don't settle quickly or easily.**
6. **The cost/benefit equation for litigation is complex and depends highly on the facts of the situation and the amount at stake.**

# Section 206 Litigation

1. **The statute is not a model of clarity.**
2. **There is no definition of "reasonable charges billed."**
3. **Premera case: headed for jury trial on the question of whether the Tribal program's charges were "reasonable" as billed.**
4. **Hospital charges are not easy to understand or justify.**

# Compliance, compliance, compliance

18 USC § 666(a)(1)(A), the Anti-Bribery Act,

A felony violation of is shown when a person who "(1) being an agent of an organization, … or Indian tribal government, or any agency thereof – (A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies property that— (i) is valued at $5,000 or more, and (ii) is owned by, or is under the care, custody, or control of such organization, government, or agency…")

18 USC § 669, “Theft or embezzlement in connection with health care.”

This statute provides up to 10 years imprisonment for a person who “knowingly and willfully embezzles, steals, or otherwise without authority converts ... or otherwise misapplies any of the moneys [or] funds …. of a health care benefit program.”

18 U.S.C. § 371, “Conspiracy to commit offense or to defraud the United States”:

Fines and up to 5 years in prison “[i]f two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy…”

# The False Claims Act

**The False Claims Act** imposes liability on any person who "knowingly presents or causes to be presented a false or fraudulent claim for payment or approval; knowingly makes, uses or causes to be made or used, a false record or statement material to a false or fraudulent claim; conspires to commit a violation of the False Claims Act….or knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government." See 31 U.S.C. § 3729(a).

# False Claims Act

DOJ's theories on FCA liability are based on

- False Claims Act, 31 U.S.C. §§3729-3733
- Civil Monetary Penalties Law, 42 U.S.C. §§ 1320a-7a
- Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812;
- Common law theories of payment by mistake, unjust enrichment, and fraud
- Note: FCA provides civil penalties between $10,781.40 and $21,562.80 **per claim**, plus three times the amount of the false claim.

# DOJ/OIG Settlements

**New "Voluntary Tribal Compliance Agreement" template.**

**Better than the CIA in almost every respect.**

**Still burdensome and intrusive, and to settle generally requires payment to the Government.**

# Questions?

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