



Region IX

Division of Medicaid & Children's Health Operations

90 Seventh Street, Suite 5-300 (5W)

San Francisco, CA 94103-6706

MAR 24 2011

Carol Chicharello, Tribal Relations Liaison
Office of Intergovernmental Relations
Arizona Health Care Cost Containment System
801 East Jefferson
Phoenix, Arizona 85034

Dear Ms. Chicharello:

In a letter dated March 3, 2011 to Cheryl Young, you requested written guidance on the services payable at 100 percent Federal Financial Participation (FFP) at Indian Health Service (IHS) facilities and tribal health programs under a P.L. 93-368 contract (referred to as "638" facilities). Specifically, you asked the following:

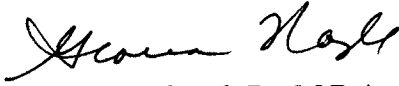
1. Whether the State may claim 100 percent FFP for any service covered under the State's Medicaid Plan or the terms of its Section 1115 Demonstration Project (including non-emergency transportation) notwithstanding that the services are not described in 42 C.F.R. § 440.10 or § 440.20, so long as the services are provided by an IHS facility or by a 638 facility consistent with the scope of services described in the P.L. 93-638 contract;
2. If so, whether the State may claim 100 percent FFP for those services regardless of the place of service; that is, regardless of whether the services are provided within the physical confines of the facility, in the community, the recipient's home, or telehealth services in the provider's [sic] home.

The ruling in the case *Arizona Health Care Cost Containment System v. Mark B. McClellan* affirms that the State may claim 100 percent FFP for any service covered under the State's Medicaid Plan or the terms of its Section 1115 Demonstration Project (including nonemergency medical transportation) so long as the services are provided by an IHS facility or by a 638 facility. These services include those provided by an agent or employee of the IHS or 638 facility. For example, if the facility has a contract with an outside physician to read x-rays, the services of this physician are payable at 100 percent FFP, as long as the IHS or 638 program bills for the services. In contrast, the services of a physician who is not under contract are not payable at 100 percent FFP. Services purchased with contract health dollars are not payable at 100 percent FFP.

In a 2001 administrative decision, the Departmental Appeals Board held that the State may claim 100 percent FFP for services provided by an IHS or 638 facility or services provided by an employee or agent of an IHS or 638 facility regardless of the place of service. In other words, the FFP rate of 100 percent is available for services outside the boundaries of an IHS or 638 facility.

If you have any questions, please contact Cindy Lemesh at Cynthia.Lemesh@cms.hhs.gov or (415) 744-3571.

Sincerely,

A handwritten signature in black ink, appearing to read "Gloria Nagle". The signature is fluid and cursive.

Gloria Nagle, Ph.D., M.P.A.
Associate Regional Administrator
Division of Medicaid & Children's Health Operations

cc: Cheryl Young
Cindy Lemesh