



Patient Protection and Affordable Care Act: *Indian Provisions*

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Indian Provisions of the Affordable Care Act

Provisions of the Affordable Care Act that will have the largest impact on states and their Native American populations are categorized into five areas relating to the following:

1. Health Exchanges;
2. Medicaid and SCHIP;
3. Indian Health Service (IHS);
4. Indian Health Care Improvement Act; and
5. Grants opportunities for Native Americans, tribes, and tribal organizations.



Provisions Related to Health Exchanges

The Affordable Care Act includes three provisions providing for different treatment of Native Americans with respect to the operation of Health Exchanges:

1. More frequent enrollment periods;
2. No cost sharing; and
3. No penalty for failure to carry minimum coverage.



Provisions Related to Health Exchanges (cont.)

Special Monthly Enrollment Periods

- The Affordable Care Act provides for special monthly enrollment periods for Indians as defined by the Indian Health Care Improvement Act.
- The Indian Health Care Improvement Act defines an Indian as any person who is a member of any Indian tribe, band, nation, or other organized group or community, who is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.



Provisions Related to Health Exchanges (cont.)

Elimination of Cost Sharing

- The Affordable Care Act eliminates all cost sharing (including premiums, co-payments, and deductibles) for Indians enrolled in qualified health plans through an Exchange if their household income is less than 300 percent of the federal poverty level.
- Issuers must eliminate cost-sharing for all Indians for any items or services furnished directly by the IHS, an Indian tribe, tribal organization, or urban Indian organization or through referral under contract health services to Indians enrolled in qualified health plans.
- The U.S. Department of Health and Human Services must make payments to issuers of qualified plans to reflect the difference in the actuarial value of their plans due to the elimination of cost sharing.



Provisions Related to Health Exchanges (cont.)

Elimination of Minimum Coverage Penalty

- The Affordable Care Act imposes a penalty on individuals, with certain exceptions, who fail to carry minimum health care coverage for one or more months during any calendar year.
 - ❖ *However, members of Indian tribes are among those exempted from penalties for failure to carry minimum health care coverage.*



Provisions Related to Medicaid & SCHIP

The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) permits states to rely on findings from an entity designated by a state as an "Express Lane Agency" to determine whether a child satisfies one or more factors of eligibility for Medicaid or CHIP.

Under this option, Express Lane agencies can provide information that the state Medicaid or SCHIP agency will use to determine eligibility.

- ❖ The Affordable Care Act determines that IHS, an Indian Tribe, Tribal Organization or Urban Indian Organization qualify as Express Lane agencies that are capable of collecting information and making a determination regarding one or more programmatic eligibility requirements for Medicaid and/or SCHIP.
- ❖ There are grants available to IHS and Indian tribes to facilitate outreach and enrollment with Medicaid.



Provisions Related to the Indian Health Service

The Affordable Care Act contains provisions that address the scope of IHS services.

Payer of Last Resort

- The Affordable Care Act provides that health programs operated by the IHS, Indian tribes, tribal organizations, and urban Indian organizations are the payer of last resort for services provided by them to Indians notwithstanding any Federal, State, or local law to the contrary.



Provisions Related to the Indian Health Service (cont.)

Elimination of Sunset for Reimbursement for all Medicare Part B Services Furnished by Certain Indian Hospitals and Clinics

- The Affordable Care Act eliminates the sunset provision for reimbursement (Social Security Act § 1880) for all Medicare Part B services furnished by a hospital or an ambulatory care clinic that is operated by the IHS or by an Indian tribe or tribal organization.
- Absent the amendment, these facilities would only have been eligible for reimbursement for selected Part B services, pursuant to a Medicare provision that prohibits reimbursement to any provider for services that the provider is obligated to provide “by a law of, or a contract with, the United States to render at public expense.”



Provisions Related to the Indian Health Service (cont.)

Inclusion of Costs Incurred by IHS toward the Annual Out-of-Pocket Threshold under Medicare Part D

- The Affordable Care Act determines that prescription drug costs paid by the IHS, an Indian tribe or tribal organization, or an urban Indian organization are to be treated as incurred costs for purposes of calculating Medicare Part D's out-of-pocket threshold.
- Thus, costs covered by the IHS or other tribal providers are similar to costs covered by a State Pharmaceutical Assistance Program and Medicare subsidies for purposes of determining whether an individual is out of the Medicare Part D coverage gap (known as the "donut hole").
- This provision applies to costs incurred on or after January 1, 2011.



Permanent Reauthorization of the Indian Health Care Improvement Act

- The Affordable Care Act enacts S. 1790, a bill reported by the Committee on Indian Affairs in December of 2009 that revises and extends the Indian Health Care Improvement Act.
- The original Act was passed in 1976 and is the cornerstone legal authority for the provision of health care to American Indians and Alaska Natives.
- This Act expired on September 30, 2000; however, by the enactment of S. 1790, the Affordable Care Act makes the Indian Health Care Improvement Act permanent.



Permanent Reauthorization of the IHCIA (cont.)

The Indian Health Care Improvement Act

- Directs IHS to establish comprehensive behavioral health, prevention, and treatment programs for Indians;
- Provides authorization for hospice, assisted living, long-term, and home- and community-based care;
- Extends the ability to recover costs from third parties to tribally operated facilities;
- Updates current law regarding collection of reimbursements from Medicare, Medicaid, and SCHIP by Indian health facilities;
- Allows tribes and tribal organizations to purchase health benefits coverage for IHS beneficiaries;



Permanent Reauthorization of the IHICIA (cont.)

The Indian Health Care Improvement Act Cont.

- Authorizes IHS to enter into arrangements with the Departments of Veterans Affairs and Defense to share medical facilities and services;
- Allows a tribe or tribal organization carrying out a program under the Indian Self-Determination and Education Assistance Act and an urban Indian organization carrying out a program under Title V of Indian Health Care Improvement Act to purchase coverage for its employees from the Federal Employees Health Benefits Program;
- Authorizes the establishment of a Community Health Representative program for urban Indian organizations to train and employ Indians to provide health care services; and
- Authorizes a study to determine the feasibility of creating a Navajo Tri-State Medicaid Agency. It would allow the Navajo Nation to administer a single Medicaid program for beneficiaries in NM, UT, and AZ.



Permanent Reauthorization of the IHICIA (cont.)

Affordable Care Act Amendments to the Community Health Aid Program

- The reauthorized Indian Health Care Improvement Act expands the “Community Health Aide Program” (CHAP) nationally, which was originally established as a pilot program in Alaska in 1992.
- In regard to the extension to other states, the Affordable Care Act’s amendments to S. 1790 allow Indian tribes outside of Alaska to elect to implement the dental health aide therapists program in any state “in which the use of dental health aide therapist services or mid-level dental health provider services is authorized under state law to supply such services in accordance with state law.”



Permanent Reauthorization of the IHICIA (cont.)

Indian Health Care Improvement Act Grants to Facilitate Medicaid and CHIP Enrollment

- Through the enactment of the Affordable Care Act, the Indian Health Care Improvement Act provides grants and contracts with the IHS, Indian tribes, tribal organizations, and urban Indian organizations to facilitate outreach, enrollment, and coverage of Indians under Social Security health benefit programs, including Medicaid and CHIP.
 - The grants include programs to provide outreach and enrollment through “video, electronic delivery methods, or telecommunication devices that allow real-time or time-delayed communication” between individual Indians and the benefit program.
 - CMS is directed to develop and disseminate “best practices” that can serve to facilitate cooperation between Indian tribes and state Medicaid programs.



Grant Opportunities

The Affordable Care Act contains several other grant opportunities for Native Americans, tribes, and tribal organizations. The following grant opportunities are specifically reserved for Native American populations:

Maternal and Child Health Services

- The Affordable Care Act gives the Secretary of HHS the flexibility to provide grants to Indian tribes, tribal organizations, or urban Indian organizations to conduct early childhood visitation programs.
 - Three tribal health organizations in New Mexico submitted grant applications regarding this funding opportunity.



Grant Opportunities (cont.)

Trauma Centers

- The Affordable Care Act directs the Secretary of HHS to award grants to qualified public, non-profit IHS, Indian tribal, and Indian urban trauma centers to defray costs of uncompensated care and to provide emergency relief to ensure continued and future availability of trauma services.

Strengthening Primary Care and Other Workforce Improvements

- The Affordable Care Act provides grants to certain entities to conduct demonstration projects that are designed to provide low-income individuals with the opportunity to obtain education and training for occupations in the health care field. The Secretary of HHS, in consultation with the Secretary of Labor, will award at least three of these grants to Indian tribes, tribal organizations, or tribal colleges or universities.



Actions to be Undertaken by the State of New Mexico

To ensure the Indian Provisions of the Affordable Care Act are implemented in New Mexico, IAD worked with other members of Governor Richardson's Leadership Team to include the following necessary actions in the State's Strategic Plan:

- As federal grant opportunities are announced, state and tribal applications should be coordinated to maximize funding to New Mexico in order to address Native American health needs and disparities;
- State agencies shall communicate, collaborate, and consult with tribes regarding health care reform initiatives and policies that will impact American Indians;
- State agencies should assess and include actions to implement the Indian Provisions of the Affordable Care Act in their agencies' strategic and work plans, and
- Establish an Indian Provision Health Care Reform ad hoc workgroup from the State-Tribal Workgroup created by HSD in order to ensure adherence with and effective implementation of the Indian Provisions of the Affordable Care Act.



Thank You!

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