

MCT CONSTITUTIONAL REFORM DRAFTING COMMITTEE

Date: 10/17/23 Time: 6 PM

Facilitator: Carol J.

Present: Raymond B., Clair G., Julie H-C

NEW BUSINESS:

1. Follow up of discussion last week regarding Indian Health Service for non-Natives. The following is from <https://www.ihs.gov/aboutihs/>

Requirements: Eligibility

Eligibility requirements for Purchased/Referred Care (PRC) are in addition to meeting the requirements for direct care services at an IHS or tribal facility. The PRC is not an entitlement program. An individual must meet the eligibility requirements as defined by Federal regulations published in Code of Federal Regulations (CFR), at Title 42, Section 136.21 through 136.25, and Indian Health Services, Part 2, Chapter 3, "Contract Health Services" dated January 5, 1998. These federal regulations are available at local Area IHS health centers and hospitals including the PRC webpage Resources Section. A person may be regarded as within the scope of the Indian Health program if he/she is not otherwise excluded there from by provision of law. There are five eligibility requirements, which must be met by each person needing and applying for PRC assistance. The eligibility requirements are:

- (a) Is of Indian and/or Alaska Native descent as evidenced by one or more of the factors:
Meaning an individual must be of **Indian descent** and belong to the Indian community which may be verified by tribal descendancy or census number. An individual must be a member, enrolled or otherwise, or an Indian or Alaska Native Tribe or Group under Federal supervision;
- (b) Any other reasonable factor indicative of Indian descent; or
 - o Is an Indian of Canadian or Mexican origin recognized by any Indian tribe or group as a member of an Indian community served by the Indian Health program; or
 - o Is a non-Indian woman pregnant with an eligible Indian's child for the duration of her pregnancy through post partum (usually 6 weeks); or
 - o Is a non-Indian member of an eligible Indian's household and the medical officer in charge services are necessary to control a public health hazard or an acute infectious disease which constitutes a public health hazard.
- (c) An individual resides within his/her Tribal Purchases/Referred Care (PRC) delivery area The Tribal PRC delivery area encompasses the Reservation, trust land, and the counties that border the reservation. Resides on tax-exempt land or owns restricted property;
- (d) The following individuals also must meet the residency requirements:
 - o Students who are temporarily absent from his/her PRC delivery area during full-time attendance of boarding school, college, vocational, technical, and other academic education. The coverage ceases 180 days after completing the study.
 - o A person who is temporarily absent from his/her PRC delivery area due to travel, employment, etc. eligibility ceases after 180 days.
 - o Children placed in foster care outside of the PRC delivery area by court order.
 - o Other Indian persons who maintain "close social and economic ties" with the Tribe.

- (e) Residency documentation for eligibility established with the new IHS-976, PROOF OF RESIDENCY form. The form became effective in 2020 for all IHS federal sites. Tribal sites have the option to utilize the IHS-976 form or establish their own form for documentation.
 - [IHS-976, PROOF OF RESIDENCY](#)
- (f) Notification and authorization of approval for payment. An individual must be authorized by PRC authorizing official for the payment of services.
 - Authorization is based on a IHS provider issuing a referral for medical care being submitted to PRC program. The referral is reviewed by the Managed Care Committee who will determine the medical priority.
 - In cases of emergency based on IHS medical priorities; a 72-hour notification to the PRC program must be made by the individual, provider, hospital, or someone on behalf of the individual.
 - Notification is extended to 30-days for the elderly and disabled. Disabled meaning the individual cannot physically/mentally notify the PRC program.
- (g) PRC funds are limited to the medical or dental services considered medically necessary and listed within the established Area IHS medical/dental priorities. A copy of the Area IHS **medical/dental priorities** is available at the local IHS health centers and hospitals including Priorities or Care section of this webpage. An individual medical need at the time of services must be within the medical priorities being funded at that time.
- (h) An individual must apply for and use all alternate resources that are available and accessible, such as Medicare A and B, state Medicaid, state or other federal health program, private insurance, etc. The IHS facility is also considered a resource, and therefore, the PRC funds may not be expended for services reasonably accessible and available at IHS facilities.
- (i) The IHS is the "payor of last resort" of persons defined as eligible for PRC, notwithstanding any state or local law or regulation to the contrary. Citation CFR at Title 42 — 136.61.

Glossary

1. Eligible Indian is not specifically defined, but the following helps determine who they are, Also see FAQ below:
 - **Contract Health Services Eligible Person**
Now known as Purchased/Referred Care Eligible Person. **A person of Indian descent** belonging to the Indian community served by the local IHS facilities and program who: resides within the United States (U.S.) on a reservation located within a Contract Health Service Delivery Area (CHSDA); resides within a CHSDA and is either a member of the tribe or tribes located on that reservation; or maintains close economic and social ties with that tribe or tribes.
 - **Eligibility**
The established conditions as identified in the Federal Regulations that a person must meet in order to receive the health care services.
 - **Federally Recognized Indian**
Individual who has obtained a Bureau of Indian Affairs Certificate Degree of Indian Blood for the Tribe under Federal supervision that they are a member.
 - **Tribal Member**
A person who is an enrolled descendent of a tribe, or is granted tribal membership by some other criteria in the tribal constitution.

Frequently Asked Questions:

Q. Can non-Indians be eligible for PRC?

A: Yes, but only for three classes of non-Indians. These include (1) non-Indian women pregnant with an eligible Indian's child during pregnancy through postpartum (42 CFR 136.12(a)); (2) non-Indians under 19 who are the natural, adopted, step-child, foster-child, legal ward, or orphan of an eligible Indian (section 813(a)(1) of IHCIA); and (3) non-Indian spouses of eligible Indians if all such spouses are made eligible through a tribal resolution (section 813(a)(2) of IHCIA).

Q. What does Social, Economic Ties mean in 42 CFR 136.23(a)(2)(ii)?

A: Close social and economic ties are determined by the governing body, or designee, of the local Tribe. The IHS considers employees of the Tribe and spouses and children of eligible members of the Tribe to have close social and economic ties. The determination of eligibility applies if all individuals with the same circumstances are made eligible through a tribal resolution.

Q. If my PRC Program is operating on a strict budget, can PRC eligibility be suspended for non-Indians residing on and off the reservation?

A: Yes and no. No, for non-Indian children of eligible Indians made eligible under section 813(a)(1) of the IHCIA and non-Indian women pregnant with an eligible Indians child made eligible under 42 CFR 136.12(a). Yes, for non-Indian spouses made eligible under section 813(a)(2) of the IHCIA if the Tribe revokes the resolution which granted such individuals eligibility. No other non-Indians should be receiving PRC services.

Q. What is the citation that requires our PRC Program to provide PRC to non-Indian children?

A: See section 813(a)(1) of the IHCIA. PRC applies to non-Indian children if they are the natural, adopted, step-child, foster-child, legal ward, or orphan of an eligible Indian.

Q. If we are guaranteed health care from our treaties as long as the water flows and the grass grows, why are Indians required to apply for AR?

A: It is required under 42 CFR 136.61, Payor of last resort. While some treaties mention health care, the Indian Health Service is not an entitlement program, and therefore funding for PRC is not guaranteed by the Federal government. AR allow PRC funds to be conserved, thereby providing health care for more Indian beneficiaries.

- 2. Question the Drafting Committee has is:** Why are non-Indian children if they are the natural, adopted, step-child, foster-child, legal ward, or orphan of an eligible Indian? Section 813 explains this.

- Section 813(b)(1)(A) of the Indian Health Care Improvement Act (IHCIA) provides guidance for the Indian Health Service (IHS) to use in making a determination with a Tribe or Tribes when direct care health services may be provided to ineligible individuals. The first determination that must be made is whether there is any reasonable alternative health facility or services available for the services proposed to be provided to ineligible individuals .
 - What is the second determination that must be made? How does IHS determine whether there are reasonable alternative health facilities or services available? Can you give me an example of ineligible individuals under section 813?
 - **Children** (under 19 and natural or adopted child, step-child, foster-child, legal ward or orphan of an eligible Indian) and **Spouses of eligible Indians**. Is it if the following occurs:
 - Anyone under **Special Limited Situations** (medical emergency; prevent spread of disease or public health hazard; women pregnant with eligible Indian's child; and immediate family members if directly related to treatment of eligible person).
3. **Question the Drafting Committee has is:** Does MCT have a Resolution to include non-Indian spouses for services from IHS?
4. The committee members reviewed the Grand Council and Central Council Roles and Responsibilities. The modified document will be sent to Cheryl E. for distribution to all delegates.

Next Meeting: No Meeting on 10/24/23. We will meet on 10/31/23 at 6 PM.