

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service
Rockville, Maryland 20857

Refer to: ORAP

INDIAN HEALTH SERVICE CIRCULAR NO. 2016-08

PURCHASING HEALTH CARE COVERAGE

Sec.

1. Purpose
2. Contract/Compact Language
3. Eligibility Criteria
4. Purchased/Referred Care Residual Responsibility & Coordination of Benefits
5. Eligibility For the Catastrophic Health Emergency Fund
6. Effective Date

1. PURPOSE. The purpose of this circular is to provide further detailed guidance into the current policy (Oct. 2013 Dear Tribal Leader Letter) if a Tribe, Tribal organization, or urban Indian organization wishes to purchase coverage for Indian Health Service (IHS) beneficiaries under 25 *United States Code* (U.S.C.) § 1642 with Indian Self-Determination and Education Assistance Act (ISDEAA) funding or other IHS appropriated funds.
2. CONTRACT/COMPACT LANGUAGE. The following language is recommended to be inserted into a new or an existing Tribal-IHS contract/compact or funding agreement to identify:
 - A. The funding source, i.e., Purchased/Referred Care (PRC), Hospital & Clinic (H&C) funds, third-party revenues, or tribal supplements
 - B. The specific amount of funding needed
 - C. The type of coverage that will be provided
 - D. Eligibility criteria
 - E. Alternate resource rules, if applicable

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Distribution: IHS-wide

Date: XX/XX/2016

- F. If third-party revenues collected by the Tribe are identified as part or all of the funding source, IHS recommends the following:
- (1) The funds should have already been collected and not yet expended (i.e., not amounts owed or future projections for anticipated collections).
 - (2) In accordance with 25 U.S.C. § 1641, Medicare and Medicaid collections are intended to be used first to maintain or achieve compliance with the respective program.
 - (3) To the extent the third-party revenues are collected by IHS, the contract/compact should not promise or guarantee the award of third-party revenue, including revenue derived from sponsorship coverage. Such collections may only be transferred as authorized by law and shall be considered nonrecurring.
3. ELIGIBILITY CRITERIA. Tribes and Tribal Organizations may make eligibility determinations for IHS programs under 25 U.S.C. 450j-1, but must follow applicable eligibility rules and regulations. In addition, the purchase of health care coverage by an Indian tribe, tribal organization, or urban Indian organization can be based on the financial need of the beneficiary, if the Tribe/Tribal Organization or urban Indian organization wishes to limit the number of beneficiaries covered, pursuant to 25 U.S.C. §1642. The statute specifies that the financial need of the beneficiary is determined by the tribe(s) served, based upon a schedule of income levels developed by the tribe(s) served. The IHS makes the following recommendations with respect to eligibility:
- A. Eligibility should follow the source of funding.
- (1) If non-PRC funds are utilized, direct service eligibility rules should apply.
 - (2) If PRC funds are utilized, alone or in combination with non-H&C funds, including supplements from the tribe, PRC eligibility should apply.
 - (3) If both unrestricted H&C and PRC funds are utilized, the contract/compact should state whether direct service or PRC eligibility will be followed and the funds should be rebudgeted accordingly.
- B. If any PRC funds are used and they are not rebudgeted as H&C funds according to the guidance above, PRC eligibility rules should be followed for the sponsorship and references to the following PRC eligibility rules should be included in the contract or compact:
- (1) 42 Code of Federal Regulations (CFR) 136.23 – Persons to whom contract health services (now known as Purchased/Referred Care) will be provided.

- (2) The language of 42 CFR 136.22(a) – (PRC Service Delivery Area) - “In accordance with the congressional intention that funds appropriated for the general support of the health program of the IHS be used to provide health services for Indians who live on or near Indian reservations...”
 - C. Coverage can be provided to IHS beneficiaries who are also employees of tribal businesses, but eligibility should not be limited to tribal employees.
4. Purchased/Referred Care Residual Responsibility & Coordination of Benefits. IHS recommends the following:
 - A. When a Direct Service Tribe (DST) decides to take a portion of its PRC funds to purchase insurance for some or all of their tribal members, this leaves a residual of funds in the DST PRC program to provide care for those who are PRC eligible who do not have alternate resources. IHS makes the following recommendations with respect to PRC residual responsibility:
 - (1) IHS considers sponsorship through indemnity to be an alternate resource under the payer of last resort rule.
 - (2) In the case of sponsorship through a self-insurance plan, where the plan is self-funded in part or whole with ISDEAA funds and there is no reinsurance or indemnity, the self-funded plan will be considered a payer of last resort, but benefits will be coordinated between the PRC program and the self-funded plan as set forth in subsection 4.B., below.
 - (3) IHS does not consider an IHS beneficiary to be eligible for PRC to the extent that the sponsorship provides coverage.
 - B. Under the payer of last resort rule and a coordination of benefits process, the PRC program shall not pay primary to any third-party payers, including sponsorship in any form.
 - C. To the extent that a plan is indemnified or reinsured, it does not qualify as a self-insurance plan that is exempt from IHS’ right of recovery under 25 U.S.C. § 1621e(f). IHS shall have the right to recover under 25 U.S.C. § 1621e(a) from any indemnity or reinsurance, whether or not it is purchased through 25 U.S.C. § 1642.
5. ELIGIBILITY FOR THE CATASTROPHIC HEALTH EMERGENCY FUND. In the case of sponsorship through a self-insurance plan, where the plan is entirely self-funded in part or whole with ISDEAA funds and there is no reinsurance or indemnity, and the plan is designed to follow PRC eligibility, the self-funded plan will be considered eligible

for reimbursement from the Catastrophic Health Emergency Fund on the same basis and under the same terms that PRC programs are eligible for such reimbursement.

6. EFFECTIVE DATE. This circular becomes effective on date of signature.

Mary Smith
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