after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as a note under section 14401 of Title 42, The Public Health and Welfare.

§ 1621y. Contract health service administration and disbursement formula

(a) Submission of report

As soon as practicable after March 23, 2010, the Comptroller General of the United States shall submit to the Secretary, the Committee on Indian Affairs of the Senate, and the Committee on Natural Resources of the House of Representatives, and make available to each Indian tribe, a report describing the results of the study of the Comptroller General regarding the funding of the contract health service program (including historic funding levels and a recommendation of the funding level needed for the program) and the administration of the contract health service program (including the distribution of funds pursuant to the program), as requested by Congress in March 2009, or pursuant to section 1680t of this title.

(b) Consultation with tribes

On receipt of the report under subsection (a), the Secretary shall consult with Indian tribes regarding the contract health service program, including the distribution of funds pursuant to the program—

(1) to determine whether the current distribution formula would require modification if the contract health service program were funded at the level recommended by the Comptroller General;

(2) to identify any inequities in the current distribution formula under the current funding level or inequitable results for any Indian tribe under the funding level recommended by the Comptroller General;

(3) to identify any areas of program administration that may result in the inefficient or ineffective management of the program; and

(4) to identify any other issues and recommendations to improve the administration of the contract health services program and correct any unfair results or funding disparities identified under paragraph (2).

(c) Subsequent action by Secretary

If, after consultation with Indian tribes under subsection (b), the Secretary determines that any issue described in subsection (b)(2) exists, the Secretary may initiate procedures under subchapter III of chapter 5 of title 5 to negotiate or promulgate regulations to establish a disbursement formula for the contract health service program funding.

(Pub. L. 94–437, title II, § 226, as added Pub. L. 111–148, title X, § 10221(a), Mar. 23, 2010, 124 Stat. 935.)

CODIFICATION

Section 226 of Pub. L. 94–437 is based on section 137 of title I of S. 1790, One Hundred Eleventh Congress, as reported by the Committee on Indian Affairs of the Senate in Dec. 2009, which was enacted into law by section 10221(a) of Pub. L. 111–148.

§ 1622. Transferred

CODIFICATION

Section, Pub. L. 94–437, title IV, § 404, as added Pub. L. 96–537, § 6, Dec. 17, 1980, 94 Stat. 3176, which related to grants to and contracts with tribal organizations, was transferred to section 1644 of this title.

§ 1623. Special rules relating to Indians

(a) No Cost-sharing for Indians with income at or below 300 percent of poverty enrolled in coverage through a State Exchange

For provisions prohibiting cost sharing for Indians enrolled in any qualified health plan in the individual market through an Exchange, see section 18071(d) of title 42.

(b) Payer of last resort

Health programs operated by the Indian Health Service, Indian tribes, tribal organizations, and Urban Indian organizations (as those terms are defined in section 1603 of this title) shall be the payer of last resort for services provided by such Service, tribes, or organizations to individuals eligible for services through such programs, notwithstanding any Federal, State, or local law to the contrary.

(Pub. L. 111–148, title II, § 2901(a), (b), Mar. 23, 2010, 124 Stat. 333.)

CODIFICATION

Section is comprised of subsecs. (a) and (b) of section 2901 of Pub. L. 111–148. Subsections (c) and (d) of section 2901 amended sections 1396a and 1320b–9, respectively, of Title 42, The Public Health and Welfare.

Section was enacted as part of the Patient Protection and Affordable Care Act, and not as part of the Indian Health Care Improvement Act which comprises this chapter.

SUBCHAPTER III—HEALTH FACILITIES

§ 1631. Consultation; closure of facilities; reports

(a) Consultation; standards for accreditation

Prior to the expenditure of, or the making of any firm commitment to expend, any funds appropriated for the planning, design, construction, or renovation of facilities pursuant to section 13 of this title, the Secretary, acting through the Service, shall—

(1) consult with any Indian tribe that would be significantly affected by such expenditure for the purpose of determining and, whenever practicable, honoring tribal preferences concerning size, location, type, and other characteristics of any facility on which such expenditure is to be made, and

(2) ensure, whenever practicable, that such facility meets the standards of the Joint Commission on Accreditation of Health Care Organizations by not later than 1 year after the date on which the construction or renovation of such facility is completed.

(b) Closure; report on proposed closure

(1) Notwithstanding any provision of law other than this subsection, no Service hospital or outpatient health care facility of the Service, or any portion of such a hospital or facility, may be closed if the Secretary has not submitted to the Congress at least 1 year prior to the date

such hospital or facility (or portion thereof) is proposed to be closed an evaluation of the impact of such proposed closure which specifies, in addition to other considerations—

(A) the accessibility of alternative health care resources for the population served by such hospital or facility;

(B) the cost effectiveness of such closure;

(C) the quality of health care to be provided to the population served by such hospital or facility after such closure;

(D) the availability of contract health care funds to maintain existing levels of service;

(E) the views of the Indian tribes served by such hospital or facility concerning such closure;

(F) the level of utilization of such hospital or facility by all eligible Indians; and

(G) the distance between such hospital or facility and the nearest operating Service hospital.

(2) Paragraph (1) shall not apply to any temporary closure of a facility or of any portion of a facility if such closure is necessary for medical, environmental, or safety reasons.

(c) Health care facility priority system

(1) In general

(A) Priority system

The Secretary, acting through the Service, shall maintain a health care facility priority system, which—

(i) shall be developed in consultation with Indian tribes and tribal organizations;

(ii) shall give Indian tribes' needs the highest priority;

(iii)(I) may include the lists required in paragraph (2)(B)(ii); and

(II) shall include the methodology required in paragraph (2)(B)(v); and

(III) may include such health care facilities, and such renovation or expansion needs of any health care facility, as the Service may identify; and

(iv) shall provide an opportunity for the nomination of planning, design, and construction projects by the Service, Indian tribes, and tribal organizations for consideration under the priority system at least once every 3 years, or more frequently as the Secretary determines to be appropriate.

(B) Needs of facilities under ISDEAA agreements

The Secretary shall ensure that the planning, design, construction, renovation, and expansion needs of Service and non-Service facilities operated under contracts or compacts in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) are fully and equitably integrated into the health care facility priority system.

(C) Criteria for evaluating needs

For purposes of this subsection, the Secretary, in evaluating the needs of facilities operated under a contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), shall use the criteria used by the Secretary in evaluating the needs of facilities operated directly by the Service.

(D) Priority of certain projects protected

The priority of any project established under the construction priority system in effect on March 23, 2010, shall not be affected by any change in the construction priority system taking place after that date if the project—

(i) was identified in the fiscal year 2008 Service budget justification as—

(I) 1 of the 10 top-priority inpatient projects;

(II) 1 of the 10 top-priority outpatient projects;

(III) 1 of the 10 top-priority staff quarters developments; or

(IV) 1 of the 10 top-priority Youth Regional Treatment Centers;

(ii) had completed both Phase I and Phase II of the construction priority system in effect on March 23, 2010; or

(iii) is not included in clause (i) or (ii) and is selected, as determined by the Secretary—

(I) on the initiative of the Secretary; or

(II) pursuant to a request of an Indian tribe or tribal organization.

(2) Report; contents

(A) Initial comprehensive report

(i) Definitions

In this subparagraph:

(I) Facilities Appropriation Advisory Board

The term ''Facilities Appropriation Advisory Board'' means the advisory board, comprised of 12 members representing Indian tribes and 2 members representing the Service, established at the discretion of the Director—

(aa) to provide advice and recommendations for policies and procedures of the programs funded pursuant to facilities appropriations; and

(bb) to address other facilities issues.

(II) Facilities Needs Assessment Workgroup

The term ''Facilities Needs Assessment Workgroup'' means the workgroup established at the discretion of the Director—

(aa) to review the health care facilities construction priority system; and

(bb) to make recommendations to the Facilities Appropriation Advisory Board for revising the priority system.

(ii) Initial report

(I) In general

Not later than 1 year after March 23, 2010, the Secretary shall submit to the Committee on Indian Affairs of the Senate and the Committee on Natural Resources of the House of Representatives

a report that describes the comprehensive, national, ranked list of all health care facilities needs for the Service, Indian tribes, and tribal organizations (including inpatient health care facilities, outpatient health care facilities, specialized health care facilities (such as for long-term care and alcohol and drug abuse treatment), wellness centers, and staff quarters, and the renovation and expansion needs, if any, of such facilities) developed by the Service, Indian tribes, and tribal organizations for the Facilities Needs Assessment Workgroup and the Facilities Appropriation Advisory Board.

(II) Inclusions

The initial report shall include—

(aa) the methodology and criteria used by the Service in determining the needs and establishing the ranking of the facilities needs; and

(bb) such other information as the Secretary determines to be appropriate.

(iii) Updates of report

Beginning in calendar year 2011, the Secretary shall—

(I) update the report under clause (ii) not less frequently that once every 5 years; and

(II) include the updated report in the appropriate annual report under subparagraph (B) for submission to Congress under section 1671 of this title.

(B) Annual reports

The Secretary shall submit to the President, for inclusion in the report required to be transmitted to Congress under section 1671 of this title, a report which sets forth the following:

(i) A description of the health care facility priority system of the Service established under paragraph (1).

(ii) Health care facilities lists, which may include—

(I) the 10 top-priority inpatient health care facilities;

(II) the 10 top-priority outpatient health care facilities;

(III) the 10 top-priority specialized health care facilities (such as long-term care and alcohol and drug abuse treatment); and

(IV) the 10 top-priority staff quarters developments associated with health care facilities.

(iii) The justification for such order of priority.

(iv) The projected cost of such projects.

(v) The methodology adopted by the Service in establishing priorities under its health care facility priority system.

(3) Requirements for preparation of reports

In preparing the report required under paragraph (2), the Secretary shall—

(A) consult with and obtain information on all health care facilities needs from Indian tribes and tribal organizations; and

(B) review the total unmet needs of all Indian tribes and tribal organizations for health care facilities (including staff quarters), including needs for renovation and expansion of existing facilities.

(d) Review of methodology used for health facilities construction priority system

(1) In general

Not later than 1 year after the establishment of the priority system under subsection (c)(1)(A), the Comptroller General of the United States shall prepare and finalize a report reviewing the methodologies applied, and the processes followed, by the Service in making each assessment of needs for the list under subsection (c)(2)(A)(ii) and developing the priority system under subsection (c)(1), including a review of—

(A) the recommendations of the Facilities Appropriation Advisory Board and the Facilities Needs Assessment Workgroup (as those terms are defined in subsection (c)(2)(A)(i)); and

(B) the relevant criteria used in ranking or prioritizing facilities other than hospitals or clinics.

(2) Submission to Congress

The Comptroller General of the United States shall submit the report under paragraph (1) to—

(A) the Committees on Indian Affairs and Appropriations of the Senate;

(B) the Committees on Natural Resources and Appropriations of the House of Representatives; and

(C) the Secretary.

(e) Funding condition

All funds appropriated under section 13 of this title, for the planning, design, construction, or renovation of health facilities for the benefit of 1 or more Indian Tribes shall be subject to the provisions of section 102 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f) or sections 504 and 505 of that Act (25 U.S.C. 458aaa–3, 458aaa–4).

(f) Development of innovative approaches

The Secretary shall consult and cooperate with Indian tribes and tribal organizations, and confer with urban Indian organizations, in developing innovative approaches to address all or part of the total unmet need for construction of health facilities, that may include—

(1) the establishment of an area distribution fund in which a portion of health facility construction funding could be devoted to all Service areas;

(2) approaches provided for in other provisions of this subchapter; and

(3) other approaches, as the Secretary determines to be appropriate.

(h)[1] Funds appropriated subject to section 450f of this title

All funds appropriated under section 13 of this title for the planning, design, construction, or renovation of health facilities for the benefit of

[1] So in original. Subsec. (g) is set out below.

an Indian tribe or tribes shall be subject to the provisions of section 102 of the Indian Self-Determination Act [25 U.S.C. 450f].

(g)[2] Priority of certain projects protected

The priority of any project established under the construction priority system in effect on March 23, 2010, shall not be affected by any change in the construction priority system taking place after that date if the project—

(1) was identified in the fiscal year 2008 Service budget justification as—

(A) 1 of the 10 top-priority inpatient projects;

(B) 1 of the 10 top-priority outpatient projects;

(C) 1 of the 10 top-priority staff quarters developments; or

(D) 1 of the 10 top-priority Youth Regional Treatment Centers;

(2) had completed both Phase I and Phase II of the construction priority system in effect on March 23, 2010; or

(3) is not included in clause (i) or (ii)[3] and is selected, as determined by the Secretary—

(A) on the initiative of the Secretary; or

(B) pursuant to a request of an Indian tribe or tribal organization.

(Pub. L. 94–437, title III, § 301, Sept. 30, 1976, 90 Stat. 1406; Pub. L. 100–713, title III, § 301, Nov. 23, 1988, 102 Stat. 4812; Pub. L. 102–573, title III, § 301, title IX, § 902(4)(B), Oct. 29, 1992, 106 Stat. 4560, 4591; Pub. L. 111–148, title X, § 10221(a), Mar. 23, 2010, 124 Stat. 935.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (c)(1)(B), (C), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

CODIFICATION

Amendment by Pub. L. 111–148 is based on sections 141 and 142 of title I of S. 1790, One Hundred Eleventh Congress, as reported by the Committee on Indian Affairs of the Senate in Dec. 2009, which were enacted into law by section 10221(a) of Pub. L. 111–148.

AMENDMENTS

2010—Pub. L. 111–148 added subsecs. (c) to (f), redesignated former subsec. (d) as (h), added subsec. (g) at end, and struck out former subsec. (c) which related to annual report on health facility priority system.

1992—Subsec. (a)(2). Pub. L. 102–573, § 301(1), substituted ''Health Care Organizations'' for ''Hospitals''.

Subsec. (b)(1). Pub. L. 102–573, § 301(2), struck out ''other'' before ''outpatient health care facility'' in introductory provisions and added subpars. (F) and (G).

Subsec. (c). Pub. L. 102–573, § 301(3), redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: ''The President shall include with the budget submitted under section 1105 of title 31, for each of the fiscal years 1990, 1991, and 1992, program information documents for the construction of 10 Indian health facilities which—

''(1) comply with applicable construction standards, and

''(2) have been approved by the Secretary.''

Subsec. (c)(1). Pub. L. 102–573, § 301(4), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''The Secretary shall submit to the Congress an annual report which sets forth—''.

Subsec. (c)(2) to (5). Pub. L. 102–573, § 301(5), redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which read as follows: ''The first report required under paragraph (1) shall be submitted by no later than the date that is 180 days after November 23, 1988, and, beginning in 1990, each subsequent annual report shall be submitted by the date that is 60 days after the date on which the President submits the budget to the Congress under section 1105 of title 31.''

Subsecs. (d), (e). Pub. L. 102–573, §§ 301(3), 902(4)(B), redesignated subsec. (e) as (d) and substituted ''section 102 of the Indian Self-Determination Act'' for ''sections 102 and 103(b) of the Indian Self-Determination Act''. Former subsec. (d) redesignated (c).

1988—Pub. L. 100–713 amended section generally, substituting subsecs. (a) to (e) relating to consultation, closure of facilities, and reports for former subsecs. (a) to (c) relating to construction and renovation of Service facilities.

§ 1632. Safe water and sanitary waste disposal facilities

(a) Congressional findings

The Congress hereby finds and declares that—

(1) the provision of safe water supply systems and sanitary sewage and solid waste disposal systems is primarily a health consideration and function;

(2) Indian people suffer an inordinately high incidence of disease, injury, and illness directly attributable to the absence or inadequacy of such systems;

(3) the long-term cost to the United States of treating and curing such disease, injury, and illness is substantially greater than the short-term cost of providing such systems and other preventive health measures;

(4) many Indian homes and communities still lack safe water supply systems and sanitary sewage and solid waste disposal systems; and

(5) it is in the interest of the United States, and it is the policy of the United States, that all Indian communities and Indian homes, new and existing, be provided with safe and adequate water supply systems and sanitary sewage waste disposal systems as soon as possible.

(b) Authority; assistance; transfer of funds

(1) In furtherance of the findings and declarations made in subsection (a) of this section, Congress reaffirms the primary responsibility and authority of the Service to provide the necessary sanitation facilities and services as provided in section 2004a of title 42.

(2) The Secretary, acting through the Service, is authorized to provide under section 2004a of title 42—

(A) financial and technical assistance to Indian tribes and communities in the establishment, training, and equipping of utility organizations to operate and maintain Indian sanitation facilities;

(B) ongoing technical assistance and training in the management of utility organizations which operate and maintain sanitation facilities; and

[2] So in original. Subsec. (h) is set out above.

[3] So in original. Probably should be ''paragraph (1) or (2)''.

(C) operation and maintenance assistance for, and emergency repairs to, tribal sanitation facilities when necessary to avoid a health hazard or to protect the Federal investment in sanitation facilities.

(3) Notwithstanding any other provision of law—

(A) the Secretary of Housing and Urban Affairs is authorized to transfer funds appropriated under the Housing and Community Development Act of 1974 (42 U.S.C. 5301, et seq.) to the Secretary of Health and Human Services, and

(B) the Secretary of Health and Human Services is authorized to accept and use such funds for the purpose of providing sanitation facilities and services for Indians under section 2004a of title 42.

(c) 10-year plan

Beginning in fiscal year 1990, the Secretary, acting through the Service, shall develop and begin implementation of a 10-year plan to provide safe water supply and sanitation sewage and solid waste disposal facilities to existing Indian homes and communities and to new and renovated Indian homes.

(d) Tribal capability

The financial and technical capability of an Indian tribe or community to safely operate and maintain a sanitation facility shall not be a prerequisite to the provision or construction of sanitation facilities by the Secretary.

(e) Amount of assistance

(1) The Secretary is authorized to provide financial assistance to Indian tribes and communities in an amount equal to the Federal share of the costs of operating, managing, and maintaining the facilities provided under the plan described in subsection (c) of this section.

(2) For the purposes of paragraph (1), the term ''Federal share'' means 80 percent of the costs described in paragraph (1).

(3) With respect to Indian tribes with fewer than 1,000 enrolled members, the non-Federal portion of the costs of operating, managing, and maintaining such facilities may be provided, in part, through cash donations or in kind property, fairly evaluated.

(f) Eligibility of programs administered by Indian tribes

Programs administered by Indian tribes or tribal organizations under the authority of the Indian Self-Determination Act [25 U.S.C. 450f et seq.] shall be eligible for—

(1) any funds appropriated pursuant to this section, and

(2) any funds appropriated for the purpose of providing water supply or sewage disposal services,

on an equal basis with programs that are administered directly by the Service.

(g) Annual report; sanitation deficiency levels

(1) The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 1671 of this title, a report which sets forth—

(A) the current Indian sanitation facility priority system of the Service;

(B) the methodology for determining sanitation deficiencies;

(C) the level of sanitation deficiency for each sanitation facilities project of each Indian tribe or community;

(D) the amount of funds necessary to raise all Indian tribes and communities to a level I sanitation deficiency; and

(E) the amount of funds necessary to raise all Indian tribes and communities to zero sanitation deficiency.

(2) In preparing each report required under paragraph (1) (other than the initial report), the Secretary shall consult with Indian tribes and tribal organizations (including those tribes or tribal organizations operating health care programs or facilities under any contract entered into with the Service under the Indian Self-Determination Act [25 U.S.C. 450f et seq.]) to determine the sanitation needs of each tribe.

(3) The methodology used by the Secretary in determining sanitation deficiencies for purposes of paragraph (1) shall be applied uniformly to all Indian tribes and communities.

(4) For purposes of this subsection, the sanitation deficiency levels for an Indian tribe or community are as follows:

(A) level I is an Indian tribe or community with a sanitation system—

(i) which complies with all applicable water supply and pollution control laws, and

(ii) in which the deficiencies relate to routine replacement, repair, or maintenance needs;

(B) level II is an Indian tribe or community with a sanitation system—

(i) which complies with all applicable water supply and pollution control laws, and

(ii) in which the deficiencies relate to capital improvements that are necessary to improve the facilities in order to meet the needs of such tribe or community for domestic sanitation facilities;

(C) level III is an Indian tribe or community with a sanitation system which—

(i) has an inadequate or partial water supply and a sewage disposal facility that does not comply with applicable water supply and pollution control laws, or

(ii) has no solid waste disposal facility;

(D) level IV is an Indian tribe or community with a sanitation system which lacks either a safe water supply system or a sewage disposal system; and

(E) level V is an Indian tribe or community that lacks a safe water supply and a sewage disposal system.

(5) For purposes of this subsection, any Indian tribe or community that lacks the operation and maintenance capability to enable its sanitation system to meet pollution control laws may not be treated as having a level I or II sanitation deficiency.

(Pub. L. 94–437, title III, §302, Sept. 30, 1976, 90 Stat. 1407; Pub. L. 100–713, title III, §302, Nov. 23, 1988, 102 Stat. 4814; Pub. L. 102–573, title III, §§302, 307(b)(1), Oct. 29, 1992, 106 Stat. 4560, 4564.)

REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in subsec. (b)(3)(A), is Pub. L. 93–383,

Aug. 22, 1974, 88 Stat. 633, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

The Indian Self-Determination Act, referred to in subsecs. (f) and (g)(2), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1992—Subsec. (e). Pub. L. 102–573, § 302(1), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''The provisions of this section shall not diminish the primary responsibility of the Indian family, community, or tribe to establish, collect, and utilize reasonable user fees, or otherwise set aside funding, for the purpose of operating and maintaining sanitation facilities.''

Subsec. (f)(1). Pub. L. 102–573, § 302(2), substituted ''this section'' for ''subsection (h) of this section''.

Subsec. (g)(1). Pub. L. 102–573, § 302(3)(A), substituted ''The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 1671 of this title, a report'' for ''The Secretary shall submit to the Congress an annual report''.

Subsec. (g)(2) to (6). Pub. L. 102–573, § 302(3)(B), redesignated pars. (3) to (6) as (2) to (5), respectively, and struck out former par. (2) which read as follows: ''The first report required under paragraph (1) shall be submitted by no later than the date that is 180 days after November 23, 1988, and, beginning in 1990, each subsequent annual report shall be submitted by the date that is 60 days after the date on which the President submits the budget to the Congress under section 1105 of title 31.''

Subsec. (h). Pub. L. 102–573, § 307(b)(1), struck out subsec. (h) which authorized appropriations to carry out subsec. (b)(2) for fiscal years 1990 to 1992.

1988—Pub. L. 100–713 amended section generally, substituting subsecs. (a) to (h) relating to safe water and sanitary waste disposal facilities for former subsecs. (a) to (c) relating to construction of safe water and sanitary waste disposal facilities.

§ 1633. Preferences to Indians and Indian firms

(a) Discretionary authority; covered activities

The Secretary, acting through the Service, may utilize the negotiating authority of section 47 of this title, to give preference to any Indian or any enterprise, partnership, corporation, or other type of business organization owned and controlled by an Indian or Indians including former or currently federally recognized Indian tribes in the State of New York (hereinafter referred to as an ''Indian firm'') in the construction and renovation of Service facilities pursuant to section 1631 of this title and in the construction of safe water and sanitary waste disposal facilities pursuant to section 1632 of this title. Such preference may be accorded by the Secretary unless he finds, pursuant to rules and regulations promulgated by him, that the project or function to be contracted for will not be satisfactory or such project or function cannot be properly completed or maintained under the proposed contract. The Secretary, in arriving at his finding, shall consider whether the Indian or Indian firm will be deficient with respect to (1) ownership and control by Indians, (2) equipment, (3) bookkeeping and accounting procedures, (4) substantive knowledge of the project or function to be contracted for, (5) adequately trained personnel, or (6) other necessary components of contract performance.

(b) Pay rates

For the purpose of implementing the provisions of this subchapter, the Secretary shall assure that the rates of pay for personnel engaged in the construction or renovation of facilities constructed or renovated in whole or in part by funds made available pursuant to this subchapter are not less than the prevailing local wage rates for similar work as determined in accordance with sections 3141–3144, 3146, and 3147 of title 40.

(Pub. L. 94–437, title III, § 303, Sept. 30, 1976, 90 Stat. 1407.)

CODIFICATION

''Sections 3141–3144, 3146, and 3147 of title 40'' substituted in subsec. (b) for ''the Act of March 3, 1931 (40 U.S.C. 276a—276a–5, known as the Davis-Bacon Act)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

§ 1634. Expenditure of non-Service funds for renovation

(a) Authority of Secretary

(1) Notwithstanding any other provision of law, the Secretary is authorized to accept any major renovation or modernization by any Indian tribe of any Service facility, or of any other Indian health facility operated pursuant to a contract entered into under the Indian Self-Determination Act [25 U.S.C. 450f et seq.], including—

(A) any plans or designs for such renovation or modernization; and

(B) any renovation or modernization for which funds appropriated under any Federal law were lawfully expended,

but only if the requirements of subsection (b) of this section are met.

(2) The Secretary shall maintain a separate priority list to address the needs of such facilities for personnel or equipment.

(3) The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 1671 of this title, the priority list maintained pursuant to paragraph (2).

(b) Requirements

The requirements of this subsection are met with respect to any renovation or modernization if—

(1) the tribe or tribal organization—

(A) provides notice to the Secretary of its intent to renovate or modernize; and

(B) applies to the Secretary to be placed on a separate priority list to address the needs of such new facilities for personnel or equipment; and

(2) the renovation or modernization—

(A) is approved by the appropriate area director of the Service; and

(B) is administered by the tribe in accordance with the rules and regulations prescribed by the Secretary with respect to construction or renovation of Service facilities.

(c) Recovery for non-use as Service facility

If any Service facility which has been renovated or modernized by an Indian tribe under this section ceases to be used as a Service facility during the 20-year period beginning on the date such renovation or modernization is completed, such Indian tribe shall be entitled to recover from the United States an amount which bears the same ratio to the value of such facility at the time of such cessation as the value of such renovation or modernization (less the total amount of any funds provided specifically for such facility under any Federal program that were expended for such renovation or modernization) bore to the value of such facility at the time of the completion of such renovation or modernization.

(Pub. L. 94–437, title III, § 305, as added Pub. L. 96–537, § 5, Dec. 17, 1980, 94 Stat. 3175; amended Pub. L. 100–713, title III, § 303(a), Nov. 23, 1988, 102 Stat. 4816; Pub. L. 102–573, title III, § 305, Oct. 29, 1992, 106 Stat. 4563.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (a)(1), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1992—Pub. L. 102–573 amended section generally, substituting present provisions for former provisions which related to: in subsec. (a), authority of Secretary; in subsec. (b), requirements; in subsec. (c), higher priority project; and in subsec. (d), recovery for non-use as Service facility.

1988—Pub. L. 100–713 amended section generally, substituting ''Expenditure of non-Service funds for renovation'' for ''Authorization of appropriations'' in section catchline and subsecs. (a) to (d) for former single unlettered par.

§ 1635. Repealed. Pub. L. 100–713, title III, § 303(b), Nov. 23, 1988, 102 Stat. 4817

Section, Pub. L. 98–473, title I, § 101(c) [title II, § 201], Oct. 12, 1984, 98 Stat. 1837, 1865, related to renovation and modernization of facilities.

§ 1636. Grant program for construction, expansion, and modernization of small ambulatory care facilities

(a) Authorization

(1) The Secretary, acting through the Service, shall make grants to tribes and tribal organizations for the construction, expansion, or modernization of facilities for the provision of ambulatory care services to eligible Indians (and noneligible persons as provided in subsection (c)(1)(C) of this section). A grant made under this section may cover up to 100 percent of the costs of such construction, expansion, or modernization. For the purposes of this section, the term ''construction'' includes the replacement of an existing facility.

(2) A grant under paragraph (1) may only be made to a tribe or tribal organization operating an Indian health facility (other than a facility owned or constructed by the Service, including a facility originally owned or constructed by the Service and transferred to a tribe or tribal organization) pursuant to a contract entered into under the Indian Self-Determination Act [25 U.S.C. 450f et seq.].

(b) Use of grant

(1) A grant provided under this section may be used only for the construction, expansion, or modernization (including the planning and design of such construction, expansion, or modernization) of an ambulatory care facility—

(A) located apart from a hospital;

(B) not funded under section 1631 of this title or section 1637 of this title; and

(C) which, upon completion of such construction, expansion, or modernization will—

(i) have a total capacity appropriate to its projected service population;

(ii) serve no less than 500 eligible Indians annually; and

(iii) provide ambulatory care in a service area (specified in the contract entered into under the Indian Self-Determination Act [25 U.S.C. 450f et seq.]) with a population of not less than 2,000 eligible Indians.

(2) The requirements of clauses (ii) and (iii) of paragraph (1)(C) shall not apply to a tribe or tribal organization applying for a grant under this section whose tribal government offices are located on an island.

(c) Application for grant

(1) No grant may be made under this section unless an application for such a grant has been submitted to and approved by the Secretary. An application for a grant under this section shall be submitted in such form and manner as the Secretary shall by regulation prescribe and shall set forth reasonable assurance by the applicant that, at all times after the construction, expansion, or modernization of a facility carried out pursuant to a grant received under this section—

(A) adequate financial support will be available for the provision of services at such facility;

(B) such facility will be available to eligible Indians without regard to ability to pay or source of payment; and

(C) such facility will, as feasible without diminishing the quality or quantity of services provided to eligible Indians, serve noneligible persons on a cost basis.

(2) In awarding grants under this section, the Secretary shall give priority to tribes and tribal organizations that demonstrate—

(A) a need for increased ambulatory care services; and

(B) insufficient capacity to deliver such services.

(d) Transfer of interest to United States upon cessation of facility

If any facility (or portion thereof) with respect to which funds have been paid under this section, ceases, at any time after completion of the construction, expansion, or modernization carried out with such funds, to be utilized for the purposes of providing ambulatory care services to eligible Indians, all of the right, title, and in-

terest in and to such facility (or portion thereof) shall transfer to the United States.

(Pub. L. 94–437, title III, § 306, as added Pub. L. 100–713, title III, § 304, Nov. 23, 1988, 102 Stat. 4817; amended Pub. L. 102–573, title III, § 303, Oct. 29, 1992, 106 Stat. 4561.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsecs. (a)(2) and (b)(1)(C)(iii), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1992—Pub. L. 102–573 amended section generally, substituting provisions relating to grant program for construction, expansion, and modernization of small ambulatory care facilities for provisions relating to conveyance of certain real property under Alaska Native Claims Settlement Act.

§ 1637. Indian health care delivery demonstration projects

(a) Purpose and general authority

(1) Purpose

The purpose of this section is to encourage the establishment of demonstration projects that meet the applicable criteria of this section to be carried out by the Secretary, acting through the Service, or Indian tribes or tribal organizations acting pursuant to contracts or compacts under the Indian Self Determination[1] and Education Assistance Act (25 U.S.C. 450 et seq.)—

(A) to test alternative means of delivering health care and services to Indians through facilities; or

(B) to use alternative or innovative methods or models of delivering health care services to Indians (including primary care services, contract health services, or any other program or service authorized by this chapter) through convenient care services (as defined in subsection (c)), community health centers, or cooperative agreements or arrangements with other health care providers that share or coordinate the use of facilities, funding, or other resources, or otherwise coordinate or improve the coordination of activities of the Service, Indian tribes, or tribal organizations, with those of the other health care providers.

(2) Authority

The Secretary, acting through the Service, is authorized to carry out, or to enter into contracts or compacts under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) with Indian tribes or tribal organizations to carry out, health care delivery demonstration projects that—

(A) test alternative means of delivering health care and services to Indians through facilities; or

(B) otherwise carry out the purposes of this section.

[1] So in original. Probably should be ''Self-Determination''.

(b) Use of funds

The Secretary, in approving projects pursuant to this section—

(1) may authorize such contracts for the construction and renovation of hospitals, health centers, health stations, and other facilities to deliver health care services; and

(2) is authorized—

(A) to waive any leasing prohibition;

(B) to permit use and carryover of funds appropriated for the provision of health care services under this chapter (including for the purchase of health benefits coverage, as authorized by section 1642(a) of this title);

(C) to permit the use of other available funds, including other Federal funds, funds from third-party collections in accordance with sections 1621e, 1621f, and 1641 of this title, and non-Federal funds contributed by State or local governmental agencies or facilities or private health care providers pursuant to cooperative or other agreements with the Service, 1 or more Indian tribes, or tribal organizations;

(D) to permit the use of funds or property donated or otherwise provided from any source for project purposes;

(E) to provide for the reversion of donated real or personal property to the donor; and

(F) to permit the use of Service funds to match other funds, including Federal funds.

(c) Health care demonstration projects

(1) Definition of convenient care service

In this subsection, the term ''convenient care service'' means any primary health care service, such as urgent care services, nonemergent care services, prevention services and screenings, and any service authorized by section 1621b of this title or 1621d(d) of this title, that is offered—

(A) at an alternative setting; or

(B) during hours other than regular working hours.

(2) General projects

(A) Criteria

The Secretary may approve under this section demonstration projects that meet the following criteria:

(i) There is a need for a new facility or program, such as a program for convenient care services, or an improvement in, increased efficiency at, or reorientation of an existing facility or program.

(ii) A significant number of Indians, including Indians with low health status, will be served by the project.

(iii) The project has the potential to deliver services in an efficient and effective manner.

(iv) The project is economically viable.

(v) For projects carried out by an Indian tribe or tribal organization, the Indian tribe or tribal organization has the administrative and financial capability to administer the project.

(vi) The project is integrated with providers of related health or social services (including State and local health care agencies or other health care providers)

and is coordinated with, and avoids duplication of, existing services in order to expand the availability of services.

(B) Priority

In approving demonstration projects under this paragraph, the Secretary shall give priority to demonstration projects, to the extent the projects meet the criteria described in subparagraph (A), located in any of the following Service units:

(i) Cass Lake, Minnesota.
(ii) Mescalero, New Mexico.
(iii) Owyhee and Elko, Nevada.
(iv) Schurz, Nevada.
(v) Ft. Yuma, California.

(3) Innovative health services delivery demonstration project

(A) Application or request

On receipt of an application or request from an Indian tribe, a consortium of Indian tribes, or a tribal organization within a Service area, the Secretary shall take into consideration alternative or innovated[2] methods to deliver health care services within the Service area (or a portion of, or facility within, the Service area) as described in the application or request, including medical, dental, pharmaceutical, nursing, clinical laboratory, contract health services, convenient care services, community health centers, or any other health care services delivery models designed to improve access to, or efficiency or quality of, the health care, health promotion, or disease prevention services and programs under this chapter.

(B) Approval

In addition to projects described in paragraph (2), in any fiscal year, the Secretary is authorized under this paragraph to approve not more than 10 applications for health care delivery demonstration projects that meet the criteria described in subparagraph (C).

(C) Criteria

The Secretary shall approve under subparagraph (B) demonstration projects that meet all of the following criteria:

(i) The criteria set forth in paragraph (2)(A).

(ii) There is a lack of access to health care services at existing health care facilities, which may be due to limited hours of operation at those facilities or other factors.

(iii) The project—

(I) expands the availability of services; or

(II) reduces—

(aa) the burden on Contract Health Services; or

(bb) the need for emergency room visits.

(d) Technical assistance

On receipt of an application or request from an Indian tribe, a consortium of Indian tribes, or a tribal organization, the Secretary shall provide such technical and other assistance as may be necessary to enable applicants to comply with this section, including information regarding the Service unit budget and available funding for carrying out the proposed demonstration project.

(e) Service to ineligible persons

Subject to section 1680c of this title, the authority to provide services to persons otherwise ineligible for the health care benefits of the Service, and the authority to extend hospital privileges in Service facilities to non-Service health practitioners as provided in section 1680c of this title, may be included, subject to the terms of that section, in any demonstration project approved pursuant to this section.

(f) Equitable treatment

For purposes of subsection (c), the Secretary, in evaluating facilities operated under any contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), shall use the same criteria that the Secretary uses in evaluating facilities operated directly by the Service.

(g) Equitable integration of facilities

The Secretary shall ensure that the planning, design, construction, renovation, and expansion needs of Service and non-Service facilities that are the subject of a contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) for health services are fully and equitably integrated into the implementation of the health care delivery demonstration projects under this section.

(Pub. L. 94–437, title III, §307, as added Pub. L. 101–630, title V, §504, Nov. 28, 1990, 104 Stat. 4562; amended Pub. L. 102–573, title III, §§304, 307(b)(2), title VII, §701(c)(2), title IX, §902(4)(A), Oct. 29, 1992, 106 Stat. 4562, 4564, 4572, 4591; Pub. L. 111–148, title X, §10221(a), Mar. 23, 2010, 124 Stat. 935.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1)(B), (b)(2)(B), (c)(3)(A), was in the original ''this Act'', meaning Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, known as the Indian Health Care Improvement Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsecs. (a), (f), and (g), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, which is classified principally to subchapter II (§450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

CODIFICATION

Amendment by Pub. L. 111–148 is based on section 143 of title I of S. 1790, One Hundred Eleventh Congress, as reported by the Committee on Indian Affairs of the Senate in Dec. 2009, which was enacted into law by section 10221(a) of Pub. L. 111–148.

AMENDMENTS

2010—Pub. L. 111–148 amended section generally. Prior to amendment, section authorized contracts and grants to carry out an Indian health care delivery demonstration project and related to use of funds, criteria, tech-

[2] So in original. Probably should be ''innovative''.

nical assistance, service to ineligible persons, equitable treatment, equitable integration of facilities, and report to Congress.

1992—Pub. L. 102–573, § 902(4)(A), made technical amendment to section catchline.

Subsec. (c)(1)(A). Pub. L. 102–573, § 304(a)(1), inserted ''or program'' after ''facility'' in two places.

Subsec. (c)(3)(A). Pub. L. 102–573, § 304(a)(2), substituted ''On or before September 30, 1995, the'' for ''The'' and inserted ''and for which a completed application has been received by the Secretary'' after ''paragraph (1)''.

Subsec. (c)(3)(B). Pub. L. 102–573, § 304(a)(3), which directed amendment of subsec. (c) by striking subpar. (B) and inserting a new subpar. (B), was executed by making the amendment in par. (3) of subsec. (c) to reflect the probable intent of Congress. Prior to amendment, subpar. (B) read as follows: ''After entering into contracts or awarding grants in accordance with subparagraph (A), and taking into account contracts entered into and grants awarded under such subparagraph, the Secretary may only enter into one contract or award one grant under this subsection with respect to a service area until the Secretary has entered into contracts or awarded grants for all service areas with respect to which the Secretary receives applications during the application period, as determined by the Secretary, which meet the criteria developed under paragraph (1).''

Subsec. (e). Pub. L. 102–573, § 701(c)(2), made technical amendment to the reference to section 1680c of this title to reflect renumbering of corresponding section of original act.

Subsec. (h). Pub. L. 102–573, § 304(b), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''Within 90 days after the end of the period set out in subsection (a) of this section, the Secretary shall prepare and submit to Congress a report, together with legislative recommendations, on the findings and conclusions derived from the demonstration projects.''

Subsec. (i). Pub. L. 102–573, § 307(b)(2), struck out subsec. (i) which authorized appropriation of such sums as necessary for fiscal years 1991 and 1992 for purpose of carrying out this section.

§ 1638. Land transfer

The Bureau of Indian Affairs is authorized to transfer, at no cost, up to 5 acres of land at the Chemawa Indian School, Salem, Oregon, to the Service for the provision of health care services. The land authorized to be transferred by this section is that land adjacent to land under the jurisdiction of the Service and occupied by the Chemawa Indian Health Center.

(Pub. L. 94–437, title III, § 308, as added Pub. L. 102–573, title III, § 306, Oct. 29, 1992, 106 Stat. 4564.)

§ 1638a. Tribal management of federally owned quarters

(a) Rental rates

(1) Establishment

Notwithstanding any other provision of law, a tribal health program that operates a hospital or other health facility and the federally owned quarters associated with such a facility pursuant to a contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) may establish the rental rates charged to the occupants of those quarters, on providing notice to the Secretary.

(2) Objectives

In establishing rental rates under this subsection, a tribal health program shall attempt—

(A) to base the rental rates on the reasonable value of the quarters to the occupants of the quarters; and

(B) to generate sufficient funds to prudently provide for the operation and maintenance of the quarters, and at the discretion of the tribal health program, to supply reserve funds for capital repairs and replacement of the quarters.

(3) Equitable funding

A federally owned quarters the rental rates for which are established by a tribal health program under this subsection shall remain eligible to receive improvement and repair funds to the same extent that all federally owned quarters used to house personnel in programs of the Service are eligible to receive those funds.

(4) Notice of rate change

A tribal health program that establishes a rental rate under this subsection shall provide occupants of the federally owned quarters a notice of any change in the rental rate by not later than the date that is 60 days notice before the effective date of the change.

(5) Rates in Alaska

A rental rate established by a tribal health program under this section for a federally owned quarters in the State of Alaska may be based on the cost of comparable private rental housing in the nearest established community with a year-round population of 1,500 or more individuals.

(b) Direct collection of rent

(1) In general

Notwithstanding any other provision of law, and subject to paragraph (2), a tribal health program may collect rent directly from Federal employees who occupy federally owned quarters if the tribal health program submits to the Secretary and the employees a notice of the election of the tribal health program to collect rents directly from the employees.

(2) Action by employees

On receipt of a notice described in paragraph (1)—

(A) the affected Federal employees shall pay rent for occupancy of a federally owned quarters directly to the applicable tribal health program; and

(B) the Secretary shall not have the authority to collect rent from the employees through payroll deduction or otherwise.

(3) Use of payments

The rent payments under this subsection—

(A) shall be retained by the applicable tribal health program in a separate account, which shall be used by the tribal health program for the maintenance (including capital repairs and replacement) and operation of the quarters, as the tribal health program determines to be appropriate; and

(B) shall not be made payable to, or otherwise be deposited with, the United States.

(4) Retrocession of authority

If a tribal health program that elected to collect rent directly under paragraph (1) re-

quests retrocession of the authority of the tribal health program to collect that rent, the retrocession shall take effect on the earlier of—

(A) the first day of the month that begins not less than 180 days after the tribal health program submits the request; and

(B) such other date as may be mutually agreed on by the Secretary and the tribal health program.

(Pub. L. 94–437, title III, § 309, as added Pub. L. 111–148, title X, § 10221(a), Mar. 23, 2010, 124 Stat. 935.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (a)(1), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

CODIFICATION

Section 309 of Pub. L. 94–437 is based on section 144 of title I of S. 1790, One Hundred Eleventh Congress, as reported by the Committee on Indian Affairs of the Senate in Dec. 2009, which was enacted into law by section 10221(a) of Pub. L. 111–148.

PRIOR PROVISIONS

A prior section 1638a, Pub. L. 94–437, title III, § 309, as added Pub. L. 102–573, title III, § 307(a), Oct. 29, 1992, 106 Stat. 4564, authorized appropriations through fiscal year 2000 to carry out this subchapter, prior to repeal by Pub. L. 111–148, title X, § 10221(a), Mar. 23, 2010, 124 Stat. 935. The repeal is based on section 101(b)(6) of title I of S. 1790, One Hundred Eleventh Congress, as reported by the Committee on Indian Affairs of the Senate in Dec. 2009, which was enacted into law by section 10221(a) of Pub. L. 111–148.

§ 1638b. Applicability of Buy American requirement

(a) Duty of Secretary

The Secretary shall ensure that the requirements of the Buy American Act apply to all procurements made with funds made available to carry out this subchapter.

(b) Report to Congress

The Secretary shall submit to the Congress a report on the amount of procurements from foreign entities made in fiscal years 1993 and 1994 with funds made available to carry out this subchapter. Such report shall separately indicate the dollar value of items procured with such funds for which the Buy American Act was waived pursuant to the Trade Agreement Act of 1979 or any international agreement to which the United States is a party.

(c) Fraudulent use of Made-in-America label

If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a ''Made in America'' inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, such person shall be ineligible to receive any contract or subcontract made with funds made available to carry out this subchapter, pursuant to the debarment, suspension, and ineligibility procedures described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations.

(d) "Buy American Act" defined

For purposes of this section, the term ''Buy American Act'' means title III of the Act entitled ''An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes'', approved March 3, 1933 (41 U.S.C. 10a et seq.)[1].

(Pub. L. 94–437, title III, § 310, as added Pub. L. 102–573, title III, § 308, Oct. 29, 1992, 106 Stat. 4564; amended Pub. L. 111–148, title X, § 10221(a), Mar. 23, 2010, 124 Stat. 935.)

REFERENCES IN TEXT

The Trade Agreement Act of 1979, referred to in subsec. (b), probably means the Trade Agreements Act of 1979, Pub. L. 96–39, July 26, 1979, 93 Stat. 144, as amended. For complete classification of this Act to the Code, see References in Text note set out under section 2501 of Title 19, Customs Duties, and Tables.

Title III of the Act entitled ''An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes'', approved March 3, 1933, referred to in subsec. (d), is title III of act Mar. 3, 1933, ch. 212, 47 Stat. 1520, known as the Buy American Act, which was classified generally to sections 10a, 10b, and 10c of former Title 41, Public Contracts, and was substantially repealed and restated in chapter 83 (§ 8301 et seq.) of Title 41, Public Contracts, by Pub. L. 111–350, §§ 3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. For complete classification of title III to the Code, see Short Title of 1933 Act note set out under section 101 of Title 41 and Tables. For disposition of sections of former Title 41, see Disposition Table preceding section 101 of Title 41.

CODIFICATION

Amendment by Pub. L. 111–148 is based on section 101(c)(3) of title I of S. 1790, One Hundred Eleventh Congress, as reported by the Committee on Indian Affairs of the Senate in Dec. 2009, which was enacted into law by section 10221(a) of Pub. L. 111–148.

AMENDMENTS

2010—Subsecs. (a) to (c). Pub. L. 111–148 substituted ''funds made available to carry out this subchapter'' for ''funds provided pursuant to the authorization contained in section 1638a of this title''.

§ 1638c. Contracts for personal services in Indian Health Service facilities

In fiscal year 1995 and thereafter (a) the Secretary may enter into personal services contracts with entities, either individuals or organizations, for the provision of services in facilities owned, operated or constructed under the jurisdiction of the Indian Health Service; (b) the Secretary may exempt such a contract from competitive contracting requirements upon adequate notice of contracting opportunities to individuals and organizations residing in the geographic vicinity of the health facility; (c) consideration of individuals and organizations shall be based solely on the qualifications established for the contract and the proposed contract price; and (d) individuals providing health care services pursuant to these contracts are covered by the Federal Tort Claims Act.

[1] See References in Text note below.

(Pub. L. 103–332, title II, Sept. 30, 1994, 108 Stat. 2530.)

REFERENCES IN TEXT

The Federal Tort Claims Act, referred to in text, is title IV of act Aug. 2, 1946, ch. 753, 60 Stat. 842, which was classified principally to chapter 20 (§§ 921, 922, 931–934, 941–946) of former Title 28, Judicial Code and Judiciary. Title IV of act Aug. 2, 1946, was substantially repealed and reenacted as sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, 62 Stat. 992, the first section of which enacted Title 28. The Federal Tort Claims Act is also commonly used to refer to chapter 171 of Title 28, Judiciary and Judicial Procedure. For complete classification of title IV to the Code, see Tables. For distribution of former sections of Title 28 into the revised Title 28, see Table at the beginning of Title 28.

CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1995, and not as part of the Indian Health Care Improvement Act which comprises this chapter.

§ 1638d. Credit to appropriations of money collected for meals at Indian Health Service facilities

Money before, on, and after September 30, 1994, collected for meals served at Indian Health Service facilities will be credited to the appropriations from which the services were furnished and shall be credited to the appropriation when received.

(Pub. L. 103–332, title II, Sept. 30, 1994, 108 Stat. 2530.)

CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1995, and not as part of the Indian Health Care Improvement Act which comprises this chapter.

§ 1638e. Other funding, equipment, and supplies for facilities

(a) Authorization

(1) Authority to transfer funds

The head of any Federal agency to which funds, equipment, or other supplies are made available for the planning, design, construction, or operation of a health care or sanitation facility may transfer the funds, equipment, or supplies to the Secretary for the planning, design, construction, or operation of a health care or sanitation facility to achieve—

(A) the purposes of this chapter; and

(B) the purposes for which the funds, equipment, or supplies were made available to the Federal agency.

(2) Authority to accept funds

The Secretary may—

(A) accept from any source, including Federal and State agencies, funds, equipment, or supplies that are available for the construction or operation of health care or sanitation facilities; and

(B) use those funds, equipment, and supplies to plan, design,,[1] construct, and operate health care or sanitation facilities for Indians, including pursuant to a contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(3) Effect of receipt

Receipt of funds by the Secretary under this subsection shall not affect any priority established under section 1631 of this title.

(b) Interagency agreements

The Secretary may enter into interagency agreements with Federal or State agencies and other entities, and accept funds, equipment, or other supplies from those entities, to provide for the planning, design, construction, and operation of health care or sanitation facilities to be administered by Indian health programs to achieve—

(1) the purposes of this chapter; and

(2) the purposes for which the funds were appropriated or otherwise provided.

(c) Establishment of standards

(1) In general

The Secretary, acting through the Service, shall establish, by regulation, standards for the planning, design, construction, and operation of health care or sanitation facilities serving Indians under this chapter.

(2) Other regulations

Notwithstanding any other provision of law, any other applicable regulations of the Department shall apply in carrying out projects using funds transferred under this section.

(d) Definition of sanitation facility

In this section, the term ''sanitation facility'' means a safe and adequate water supply system, sanitary sewage disposal system, or sanitary solid waste system (including all related equipment and support infrastructure).

(Pub. L. 94–437, title III, § 311, as added Pub. L. 111–148, title X, § 10221(a), Mar. 23, 2010, 124 Stat. 935.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1)(A), (b)(1), and (c)(1), was in the original ''this Act'', meaning Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, known as the Indian Health Care Improvement Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (a)(2)(B), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

CODIFICATION

Section 311 of Pub. L. 94–437 is based on section 145 of title I of S. 1790, One Hundred Eleventh Congress, as reported by the Committee on Indian Affairs of the Senate in Dec. 2009, which was enacted into law by section 10221(a) of Pub. L. 111–148.

[1] So in original.

§ 1638f. Indian country modular component facilities demonstration program

(a) Definition of modular component health care facility

In this section, the term ''modular component health care facility'' means a health care facility that is constructed—

(1) off-site using prefabricated component units for subsequent transport to the destination location; and

(2) represents[1] a more economical method for provision of health care facility[2] than a traditionally constructed health care building.

(b) Establishment

The Secretary, acting through the Service, shall establish a demonstration program under which the Secretary shall award no less than 3 grants for purchase, installation and maintenance of modular component health care facilities in Indian communities for provision of health care services.

(c) Selection of locations

(1) Petitions

(A) Solicitation

The Secretary shall solicit from Indian tribes petitions for location of the modular component health care facilities in the Service areas of the petitioning Indian tribes.

(B) Petition

To be eligible to receive a grant under this section, an Indian tribe or tribal organization must submit to the Secretary a petition to construct a modular component health care facility in the Indian community of the Indian tribe, at such time, in such manner, and containing such information as the Secretary may require.

(2) Selection

In selecting the location of each modular component health care facility to be provided under the demonstration program, the Secretary shall give priority to projects already on the Indian Health Service facilities construction priority list and petitions which demonstrate that erection of a modular component health facility—

(A) is more economical than construction of a traditionally constructed health care facility;

(B) can be constructed and erected on the selected location in less time than traditional construction; and

(C) can adequately house the health care services needed by the Indian population to be served.

(3) Effect of selection

A modular component health care facility project selected for participation in the demonstration program shall not be eligible for entry on the facilities construction priorities list entitled ''IHS Health Care Facilities FY 2011 Planned Construction Budget'' and dated May 7, 2009 (or any successor list).

[1] So in original.

[2] So in original. Probably should be ''provision of a health care facility''.

(d) Eligibility

(1) In general

An Indian tribe may submit a petition under subsection (c)(1)(B) regardless of whether the Indian tribe is a party to any contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(2) Administration

At the election of an Indian tribe or tribal organization selected for participation in the demonstration program, the funds provided for the project shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act.

(e) Reports

Not later than 1 year after the date on which funds are made available for the demonstration program and annually thereafter, the Secretary shall submit to Congress a report describing—

(1) each activity carried out under the demonstration program, including an evaluation of the success of the activity; and

(2) the potential benefits of increased use of modular component health care facilities in other Indian communities.

(f) Authorization of appropriations

There are authorized to be appropriated $50,000,000 to carry out the demonstration program under this section for the first 5 fiscal years, and such sums as may be necessary to carry out the program in subsequent fiscal years.

(Pub. L. 94–437, title III, § 312, as added Pub. L. 111–148, title X, § 10221(a), Mar. 23, 2010, 124 Stat. 935.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (d), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

CODIFICATION

Section 312 of Pub. L. 94–437 is based on section 146 of title I of S. 1790, One Hundred Eleventh Congress, as reported by the Committee on Indian Affairs of the Senate in Dec. 2009, which was enacted into law by section 10221(a) of Pub. L. 111–148.

§ 1638g. Mobile health stations demonstration program

(a) Definitions

In this section:

(1) Eligible tribal consortium

The term ''eligible tribal consortium'' means a consortium composed of 2 or more Service units between which a mobile health station can be transported by road in up to 8 hours. A Service unit operated by the Service or by an Indian tribe or tribal organization shall be equally eligible for participation in such consortium.

(2) Mobile health station

The term ''mobile health station'' means a health care unit that—

(A) is constructed, maintained, and capable of being transported within a semi-trailer truck or similar vehicle;

(B) is equipped for the provision of 1 or more specialty health care services; and

(C) can be equipped to be docked to a stationary health care facility when appropriate.

(3) Specialty health care service

(A) In general

The term ''specialty health care service'' means a health care service which requires the services of a health care professional with specialized knowledge or experience.

(B) Inclusions

The term ''specialty health care service'' includes any service relating to—

(i) dialysis;

(ii) surgery;

(iii) mammography;

(iv) dentistry; or

(v) any other specialty health care service.

(b) Establishment

The Secretary, acting through the Service, shall establish a demonstration program under which the Secretary shall provide at least 3 mobile health station projects.

(c) Petition

To be eligible to receive a mobile health station under the demonstration program, an eligible tribal consortium shall submit to the Secretary,[1] a petition at such time, in such manner, and containing—

(1) a description of the Indian population to be served;

(2) a description of the specialty service or services for which the mobile health station is requested and the extent to which such service or services are currently available to the Indian population to be served; and

(3) such other information as the Secretary may require.

(d) Use of funds

The Secretary shall use amounts made available to carry out the demonstration program under this section—

(1)(A) to establish, purchase, lease, or maintain mobile health stations for the eligible tribal consortia selected for projects; and

(B) to provide, through the mobile health station, such specialty health care services as the affected eligible tribal consortium determines to be necessary for the Indian population served;

(2) to employ an existing mobile health station (regardless of whether the mobile health station is owned or rented and operated by the Service) to provide specialty health care services to an eligible tribal consortium; and

(3) to establish, purchase, or maintain docking equipment for a mobile health station, including the establishment or maintenance of such equipment at a modular component health care facility (as defined in section 1638f(a) of this title), if applicable.

(e) Reports

Not later than 1 year after the date on which the demonstration program is established under subsection (b) and annually thereafter, the Secretary, acting through the Service, shall submit to Congress a report describing—

(1) each activity carried out under the demonstration program including an evaluation of the success of the activity; and

(2) the potential benefits of increased use of mobile health stations to provide specialty health care services for Indian communities.

(f) Authorization of appropriations

There are authorized to be appropriated $5,000,000 per year to carry out the demonstration program under this section for the first 5 fiscal years, and such sums as may be needed to carry out the program in subsequent fiscal years.

(Pub. L. 94–437, title III, § 313, as added Pub. L. 111–148, title X, § 10221(a), Mar. 23, 2010, 124 Stat. 935.)

CODIFICATION

Section 313 of Pub. L. 94–437 is based on section 147 of title I of S. 1790, One Hundred Eleventh Congress, as reported by the Committee on Indian Affairs of the Senate in Dec. 2009, which was enacted into law by section 10221(a) of Pub. L. 111–148.

SUBCHAPTER III–A—ACCESS TO HEALTH SERVICES

CODIFICATION

This subchapter was in the original title IV of Pub. L. 94–437, as amended. Prior to amendment by Pub. L. 102–573, title IV enacted section 1622 of this title and sections 1395qq and 1396j of Title 42, The Public Health and Welfare, amended sections 1395f, 1395n, and 1396d of Title 42, and enacted provisions set out as notes under section 1671 of this title and sections 1395qq and 1396j of Title 42.

§ 1641. Treatment of payments under Social Security Act health benefits programs

(a) Disregard of Medicare, Medicaid, and CHIP payments in determining appropriations

Any payments received by an Indian health program or by an urban Indian organization under title XVIII, XIX, or XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.] for services provided to Indians eligible for benefits under such respective titles shall not be considered in determining appropriations for the provision of health care and services to Indians.

(b) Nonpreferential treatment

Nothing in this chapter authorizes the Secretary to provide services to an Indian with coverage under title XVIII, XIX, or XI[1] of the Social Security Act in preference to an Indian without such coverage.

(c) Use of funds

(1) Special fund

(A) 100 percent pass-through of payments due to facilities

Notwithstanding any other provision of law, but subject to paragraph (2), payments

[1] So in original. The comma probably should not appear.

[1] So in original. Probably should be ''XXI''.