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SUBCHAPTER M—INDIAN HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 136—INDIAN HEALTH

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AUTHORITY: 42 U.S.C. 2001 and 2003; 25 U.S.C. 13; and 25 U.S.C. 1621a.

Subpart A—Purpose and Definitions

SOURCE: 64 FR 58319, Oct. 28, 1999, unless otherwise noted. Redesignated at 67 FR 35342, May 17, 2002

§ 136.1 Definitions.

When used in this part:

Bureau of Indian Affairs (BIA) means the Bureau of Indian Affairs, Department of the Interior.

Indian includes Indians in the Continental United States, and Indians, Aleuts and Eskimos in Alaska.

Indian health program means the health services program for Indians administered by the Indian Health Service within the Department of Health and Human Services.

Jurisdiction has the same geographical meaning as in Bureau of Indian Affairs usage.

Service means the Indian Health Service.

§ 136.2 Purpose of the regulations.

The regulations in this part establish general principles and program requirements for carrying out the Indian health programs.

§ 136.3 Administrative instructions.

The service periodically issues administrative instructions to its officers and employees, which are primarily found in the *Indian Health Service Manual* and the Area Office and program office supplements. These instructions are operating procedures to assist officers and employees in carrying out their responsibilities, and are not regulations establishing program requirements which are binding upon members of the general public.

Subpart B—What Services Are Available and Who Is Eligible To Receive Care?

SOURCE: 64 FR 58319, Oct. 28, 1999, unless otherwise noted. Redesignated at 67 FR 35342, May 17, 2002.

§ 136.11 Services available.

(a) *Type of services that may be available.* Services for the Indian community served by the local facilities and program may include hospital and medical care, dental care, public health nursing and preventive care (including immunizations), and health examination of special groups such as school children.

(b) *Where services are available.* Available services will be provided at hospitals and clinics of the Service, and at contract facilities (including tribal facilities under contract with the Service).

(c) *Determination of what services are available.* The Service does not provide the same health services in each area served. The services provided to any particular Indian community will depend upon the facilities and services available from sources other than the Service and the financial and personnel resources made available to the Service.

§ 136.12 Persons to whom services will be provided.

(a) *In general.* Services will be made available, as medically indicated, to persons of Indian descent belonging to the Indian community served by the local facilities and program. Services will also be made available, as medically indicated, to a non-Indian woman pregnant with an eligible Indian's child but only during the period of her pregnancy through postpartum (generally about 6 weeks after delivery). In cases where the woman is not married to the eligible Indian under applicable state or tribal law, paternity must be acknowledged in writing by the Indian or determined by order of a court of competent jurisdiction. The Service will also provide medically indicated services to non-Indian members of an eligible Indian's household if the medical officer in charge determines that this is necessary to control acute infectious disease or a public health hazard.

(2) Generally, an individual may be regarded as within the scope of the Indian health and medical service program if he/she is regarded as an Indian by the community in which he/she lives as evidenced by such factors as tribal membership, enrollment, residence on tax-exempt land, ownership of restricted property, active participation in tribal affairs, or other relevant factors in keeping with general Bureau of Indian Affairs practices in the jurisdiction.

(b) *Doubtful cases.* (1) In case of doubt as to whether an individual applying for care is within the scope of the program, the medical officer in charge shall obtain from the appropriate BIA officials in the jurisdiction information that is pertinent to his/her determination of the individual's continuing relationship to the Indian population group served by the local program.

(2) If the applicant's condition is such that immediate care and treatment are necessary, services shall be provided pending identification as an Indian beneficiary.

(c) *Priorities when funds, facilities, or personnel are insufficient to provide the indicated volume of services.* Priorities for care and treatment, as among individuals who are within the scope of the program, will be determined on the basis of relative medical need and access to other arrangements for obtaining the necessary care.

§ 136.13 [Reserved]

§ 136.14 Care and treatment of ineligible individuals.

(a) In case of an emergency, as an act of humanity, individuals not eligible under § 136.12 may be provided temporary care and treatment in Service facilities.

(b) Charging ineligible individuals. Where the Service Unit Director determines that an ineligible individual is able to defray the cost of care and treatment, the individual shall be charged at rates approved by the Assistant Secretary for Health and Surgeon General published in the FEDERAL REGISTER. Reimbursement from third-party payors may be arranged by the patient or by the Service on behalf of the patient.

[64 FR 58319, Oct. 28, 1999. Redesignated and amended at 67 FR 35342, May 17, 2002]

Subpart C—Contract Health Services

SOURCE: 64 FR 58320, Oct. 28, 1999, unless otherwise noted. Redesignated at 67 FR 35342, May 17, 2002.

§ 136.21 Definitions.

(a) *Alternate resources* is defined in § 136.61 of subpart G of this part.

(b) *Appropriate ordering official* means, unless otherwise specified by contract with the health care facility or provider, the ordering official for the contract health service delivery area in which the individual requesting contract health services or on whose behalf the services are requested, resides.

(c) *Area Director* means the Director of an Indian Health Service Area designated for purposes of administration of Indian Health Service programs.

(d) *Contract health service delivery area means* the geographic area within which contract health services will be made available by the IHS to members of an identified Indian community who reside in the area, subject to the provisions of this subpart.

(e) *Contract health services* means health services provided at the expense of the Indian Health Service from public or private medical or hospital facilities other than those of the Service.

(f) *Emergency* means any medical condition for which immediate medical attention is necessary to prevent the death or serious impairment of the health of an individual.

(g) *Indian tribe* means any Indian tribe, band, nation, group, Pueblo, or community, including any Alaska Native village or Native group, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(h) *Program Director* means the Director of an Indian Health Service ''program area'' designated for the purposes of administration of Indian Health Service programs.

(i) *Reservation* means any federally recognized Indian tribe's reservation. Pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), and Indian allotments.

(j) *Secretary* means the Secretary of Health and Human Services to whom the authority involved has been delegated.

(k) *Service* means the Indian Health Service.

(l) *Service Unit Director* means the Director of an Indian Health Service ''Service unit area'' designated for purposes of administration of Indian Health Service programs.

[64 FR 58320, Oct. 28, 1999. Redesignated and amended at 67 FR 35342, May 17, 2002]

§ 136.22 Establishment of contract health service delivery areas.

(a) In accordance with the congressional intention that funds appropriated for the general support of the

health program of the Indian Health Service be used to provide health services for Indians who live on or near Indian reservations, contract health service delivery areas are established as follows:

(1) The State of Alaska;

(2) The State of Nevada;

(3) the State of Oklahoma;

(4) Chippewa, Mackinac, Luce, Alger, Schoolcraft, Delta, and Marquette Counties in the State of Michigan;

(5) Clark, Eau Claire, Jackson, La Crosse, Monroe, Vernon, Crawford, Shawano, Marathon, Wood, Juneau, Adams, Columbia, and Sauk Counties in the State of Wisconsin and Houston County in the State of Minnesota;

(6) With respect to all other reservations within the funded scope of the Indian health program, the contract health services delivery area shall consist of a county which includes all or part of a reservation, and any county or counties which have a common boundary with the reservation.

(b) The Secretary may from time to time, redesignate areas or communities within the United States as appropriate for inclusion or exclusion from a contract health service delivery area after consultation with the tribal governing body or bodies on those reservations included within the contract health service delivery area. The Secretary will take the following criteria into consideration:

(1) The number of Indians residing in the area proposed to be so included or excluded;

(2) Whether the tribal governing body has determined that Indians residing in the area near the reservation are socially and economically affiliated with the tribe;

(3) The geographic proximity to the reservation of the area whose inclusion or exclusion is being considered; and

(4) The level of funding which would be available for the provision of contract health services.

(c) Any redesignation under paragraph (b) of this section shall be made in accordance with the procedures of the Administrative Procedure Act (5 U.S.C. 553).

§ 136.23 Persons to whom contract health services will be provided.

(a) *In general.* To the extent that resources permit, and subject to the provisions of this subpart, contract health services will be made available as medically indicated, when necessary health services by an Indian Health Service facility are not reasonably accessible or available, to persons described in and in accordance with § 136.12 of this part if those persons:

(1) Reside within the United States and on a reservation located within a contract health service delivery area; or

(2) Do not reside on a reservation but reside within a contract health service delivery area and:

(i) Are members of the tribe or tribes located on that reservation or of the tribe or tribes for which the reservation was established; or

(ii) Maintain close economic and social ties with that tribe or tribes.

(b) *Students and transients.* Subject to the provisions of this subpart, contract health services will be made available to students and transients who would be eligible for contract health services at the place of their permanent residence within a contract health service delivery area, but are temporarily absent from their residence as follows:

(1) Student—during their full-time attendance at programs of vocational, technical, or academic education, including normal school breaks (such as vacations, semester or other scheduled breaks occurring during their attendance) and for a period not to exceed 180 days after the completion of the course of study.

(2) Transients (persons who are in travel or are temporarily employed, such as seasonal or migratory workers) during their absence.

(c) *Other persons outside the contract health service delivery area.* Persons who leave the contract health service delivery area in which they are eligible for contract health service and are neither students nor transients will be eligible for contract health service for a period not to exceed 180 days from such departure.

(d) *Foster children.* Indian children who are placed in foster care outside a contract health service delivery area

by order of a court of competent jurisdiction and who were eligible for contract health services at the time of the court order shall continue to be eligible for contract health services while in foster care.

(e) *Priorities for contract health services.* When funds are insufficient to provide the volume of contract health services indicated as needed by the population residing in a contract health service delivery area, priorities for service shall be determined on the basis of relative medical need.

(f) *Alternate resources.* The term ''alternate resources'' is defined in §136.61(c) of subpart G of this part.

[64 FR 58319, Oct. 28, 1999. Redesignated and amended at 67 FR 35342, May 17, 2002]

§136.24 Authorization for contract health services.

(a) No payment will be made for medical care and services obtained from non-Service providers or in non-Service facilities unless the applicable requirements of paragraphs (b) and (c) of this section have been met and a purchase order for the care and services has been issued by the appropriate ordering official to the medical care provider.

(b) In nonemergency cases, a sick or disabled Indian, an individual or agency acting on behalf of the Indian, or the medical care provider shall, prior to the provision of medical care and services notify the appropriate ordering official of the need for services and supply information that the ordering official deems necessary to determine the relative medical need for the services and the individual's eligibility. The requirement for notice prior to providing medical care and services under this paragraph may be waived by the ordering official if:

(1) Such notice and information are provided within 72 hours after the beginning of treatment or admission to a health care facility; and

(2) The ordering official determines that giving of notice prior to obtaining the medical care and services was impracticable or that other good cause exists for the failure to provide prior notice.

(c) In emergency cases, a sick or disabled Indian, or an individual or agency acting on behalf of the Indian, or the medical care provider shall within 72 hours after the beginning of treatment for the condition or after admission to a health care facility notify the appropriate ordering official of the fact of the admission or treatment, together with information necessary to determine the relative medical need for the services and the eligibility of the Indian for the services. The 72-hour period may be extended if the ordering official determines that notification within the prescribed period was impracticable or that other good cause exists for the failure to comply.

§136.25 Reconsideration and appeals.

(a) Any person to whom contract health services are denied shall be notified of the denial in writing together with a statement of the reason for the denial. The notice shall advise the applicant for contract health services that within 30 days from the receipt of the notice the applicant:

(1) May obtain a reconsideration by the appropriate Service Unit Director of the original denial if the applicant submits additional supporting information not previously submitted; or

(2) If no additional information is submitted, may appeal the original denial by the Service Unit Director to the appropriate Area or program director. A request for reconsideration or appeal shall be in writing and shall set forth the grounds supporting the request or appeal.

(b) If the original decision is affirmed on reconsideration, the applicant shall be so notified in writing and advised that an appeal may be taken to the Area or program director within 30 days of receipt of the notice of the reconsidered decision. The appeal shall be in writing and shall set forth the grounds supporting the appeal.

(c) If the original or reconsidered decision is affirmed on appeal by the Area or program director, the applicant shall be so notified in writing and advised that a further appeal may be taken to the Director, Indian Health Service, within 30 days of receipt of the notice. The appeal shall be in writing and shall set the grounds supporting the appeal. The decision of the Director, Indian Health Service, shall constitute final administrative action.

Subpart D—Limitation on Charges for Services Furnished by Medicare-Participating Hospitals to Indians

SOURCE: 72 FR 30710, June 4, 2007, unless otherwise noted.

§ 136.30 Payment to Medicare-participating hospitals for authorized Contract Health Services.

(a) *Scope*. All Medicare-participating hospitals, which are defined for purposes of this subpart to include all departments and provider-based facilities of hospitals (as defined in sections 1861(e) and (f) of the Social Security Act) and critical access hospitals (as defined in section 1861(mm)(1) of the Social Security Act), that furnish inpatient services must accept no more than the rates of payment under the methodology described in this section as payment in full for all items and services authorized by IHS, Tribal, and urban Indian organization entities, as described in paragraph (b) of this section.

(b) *Applicability*. The payment methodology under this section applies to all levels of care furnished by a Medicare-participating hospital, whether provided as inpatient, outpatient, skilled nursing facility care, as other services of a department, subunit, distinct part, or other component of a hospital (including services furnished directly by the hospital or under arrangements) that is authorized under part 136, subpart C by a contract health service (CHS) program of the Indian Health Service (IHS); or authorized by a Tribe or Tribal organization carrying out a CHS program of the IHS under the Indian Self-Determination and Education Assistance Act, as amended, Pub. L. 93–638, 25 U.S.C. 450 *et seq.;* or authorized for purchase under § 136.31 by an urban Indian organization (as that term is defined in 25 U.S.C. 1603(h)) (hereafter ''I/T/U'').

(c) *Basic determination*. (1) Payment for hospital services that the Medicare program would pay under a prospective payment system (PPS) will be based on that PPS. For example, payment for inpatient hospital services shall be made per discharge based on the applicable PPS used by the Medicare program to pay for similar hospital services under 42 CFR part 412. Payment for outpatient hospital services shall be made based on a PPS used in the Medicare program to pay for similar hospital services under 42 CFR part 419. Payment for skilled nursing facility (SNF) services shall be based on a PPS used in the Medicare program to pay for similar SNF services under 42 CFR part 413.

(2) For Medicare participating hospitals that furnish inpatient services but are exempt from PPS and receive reimbursement based on reasonable costs (for example, critical access hospitals (CAHs), children's hospitals, cancer hospitals, and certain other hospitals reimbursed by Medicare under special arrangements), including provider subunits exempt from PPS, payment shall be made per discharge based on the reasonable cost methods established under 42 CFR part 413, except that the interim payment rate under 42 CFR part 413, subpart E shall constitute payment in full for authorized charges.

(d) *Other payments*. In addition to the amount payable under paragraph (c)(1) of this section for authorized inpatient services, payments shall include an amount to cover: The organ acquisition costs incurred by hospitals with approved transplantation centers; direct medical education costs; units of blood clotting factor furnished to an eligible patient who is a hemophiliac; and the costs of qualified non-physician anesthetists, to the extent such costs would be payable if the services had been covered by Medicare. Payment under this subsection shall be made on a per discharge basis and will be based on standard payments established by the Centers for Medicare & Medicaid Services (CMS) or its fiscal intermediaries.

(e) *Basic payment calculation*. The calculation of the payment by I/T/Us will be based on determinations made under paragraphs (c) and (d) of this section consistent with CMS instructions to its fiscal intermediaries at the time the claim is processed. Adjustments will be made to correct billing or claims processing errors, including when fraud is detected. I/T/Us shall pay the providing hospital the full PPS based rate, or the interim reasonable cost rate, without

reduction for any co-payments, coinsurance, and deductibles required by the Medicare program from the patient.

(f) *Exceptions to payment calculation.* Notwithstanding paragraph (e) of this section, if an amount has been negotiated with the hospital or its agent by the I/T/U, the I/T/U will pay the lesser of: The amount determined under paragraph (e) of this section or the amount negotiated with the hospital or its agent, including but not limited to capitated contracts or contracts per Federal law requirements;

(g) *Coordination of benefits and limitation on recovery.* If an I/T/U has authorized payment for items and services provided to an individual who is eligible for benefits under Medicare, Medicaid, or another third party payor—

(1) The I/T/U shall be the payor of last resort under § 136.61;

(2) If there are any third party payers, the I/T/U will pay the amount for which the patient is being held responsible after the provider of services has coordinated benefits and all other alternative resources have been considered and paid, including applicable copayments, deductibles, and coinsurance that are owed by the patient; and

(3) The maximum payment by the I/T/U will be only that portion of the payment amount determined under this section not covered by any other payor; and

(4) The I/T/U payment will not exceed the rate calculated in accordance with paragraph (e) of this section or the contracted amount (plus applicable cost sharing), whichever is less; and

(5) When payment is made by Medicaid it is considered payment in full and there will be no additional payment made by the I/T/U to the amount paid by Medicaid (except for applicable cost sharing).

(h) *Claims processing.* For a hospital to be eligible for payment under this section, the hospital or its agent must submit the claim for authorized services—

(1) On a UB92 paper claim form (until abolished, or on an officially adopted successor form) or the HIPAA 837 electronic claims format ANSI X12N, version 4010A1 (until abolished, or on an officially adopted successor form) and include the hospital's Medicare provider number/National Provider Identifier; and

(2) To the I/T/U, agent, or fiscal intermediary identified by the I/T/U in the agreement between the I/T/U and the hospital or in the authorization for services provided by the I/T/U; and

(3) Within a time period equivalent to the timely filing period for Medicare claims under 42 CFR 424.44 and provisions of the Medicare Claims Processing Manual applicable to the type of item or service provided.

(i) *Authorized services.* Payment shall be made only for those items and services authorized by an I/T/U consistent with part 136 of this title or section 503(a) of the Indian Health Care Improvement Act (IHCIA), Public Law 94–437, as amended, 25 U.S.C. 1653(a).

(j) *No additional charges.* A payment made in accordance with this section shall constitute payment in full and the hospital or its agent may not impose any additional charge—

(1) On the individual for I/T/U authorized items and services; or

(2) For information requested by the I/T/U or its agent or fiscal intermediary for the purposes of payment determinations or quality assurance.

§ 136.31 Authorization by urban Indian organization.

An urban Indian organization may authorize for purchase items and services for an eligible urban Indian (as those terms are defined in 25 U.S.C. 1603(f) and (h)) according to section 503 of the IHCIA and applicable regulations. Services and items furnished by Medicare-participating inpatient hospitals shall be subject to the payment methodology set forth in § 136.30.

§ 136.32 Disallowance.

(a) If it is determined that a hospital has submitted inaccurate information for payment, such as admission, discharge or billing data, an I/T/U may as appropriate—

(1) Deny payment (in whole or in part) with respect to any such services, and;

(2) Disallow costs previously paid, including any payments made under any methodology authorized under this subpart. The recovery of payments

made in error may be taken by any method authorized by law.

(b) For cost based payments previously issued under this subpart, if it is determined that actual costs fall significantly below the computed rate actually paid, the computed rate may be retrospectively adjusted. The recovery of overpayments made as a result of the adjusted rate may be taken by any method authorized by law.

Subpart E—Preference in Employment

AUTHORITY: 25 U.S.C. 44, 45, 46 and 472; Pub. L. 83–568, 68 Stat 674, 42 U.S.C. 2003.

SOURCE: 64 FR 58321, Oct. 28, 1999, unless otherwise noted. Redesignated at 67 FR 35342, May 17, 2002.

§ 136.41 Definitions.

For purposes of making appointments to vacancies in all positions in the Indian Health Service, a preference will be extended to persons of Indian descent who are:

(a) Members of any recognized Indian tribe now under Federal jurisdiction;

(b) Descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation;

(c) All others of one-half or more Indian blood of tribes indigenous to the United States;

(d) Eskimos and other aboriginal people of Alaska; or

(e) Until January 4, 1990, or until the Osage Tribe has formally organized, whichever comes first, a person of at least one-quarter degree Indian ancestry of the Osage Tribe of Indians, whose rolls were closed by an act of Congress.

§ 136.42 Appointment actions.

(a) Preference will be afforded a person meeting any one of the definitions of § 136.41 whether the placement in the position involves initial appointment, reappointment, reinstatement, transfer, reassignment, promotion, or any other personnel action intended to fill a vacancy.

(b) Preference eligibles may be given a schedule A excepted appointment under 5 CFR 213.3116(b)(8). If the individuals are within reach on a Civil Service Register, they may be given a competitive appointment.

[64 FR 58321, Oct. 28, 1999. Redesignated and amended at 67 FR 35342, May 17, 2002]

§ 136.43 Application procedure for preference eligibility.

To be considered a preference eligible, the person must submit with the employment application a Bureau of Indian Affairs certification that the person is an Indian as defined by § 136.41 except that an employee of the Indian Health Service who has a certificate of preference eligibility on file in the Official Personnel Folder is not required to resubmit such proof but may instead include a statement on the application that proof of eligibility is on file in the Official Personnel Folder.

[64 FR 58319, Oct. 28, 1999. Redesignated and amended at 67 FR 35342, May 17, 2002]

Subpart F [Reserved]

Subpart G—Residual Status

§ 136.61 Payor of last resort.

(a) The Indian Health Service is the payor of last resort for persons defined as eligible for contract health services under the regulations in this part, notwithstanding any State or local law or regulation to the contrary.

(b) Accordingly, the Indian Health Service will not be responsible for or authorize payment for contract health services to the extent that:

(1) The Indian is eligible for alternate resources, as defined in paragraph (c) of this section, or

(2) The Indian would be eligible for alternate resources if he or she were to apply for them, or

(3) The Indian would be eligible for alternate resources under State or local law or regulation but for the Indian's eligibility for contract health services, or other health services, from the Indian Health Service or Indian Health Service funded programs.

(c) *Alternate resources* means health care resources other than those of the Indian Health Service. Such resources include health care providers and institutions, and health care programs for

the payment of health services including but not limited to programs under titles XVIII or XIX of the Social Security Act (*i.e.*, Medicare, Medicaid), State or local health care programs, and private insurance.

[64 FR 58322, Oct. 28, 1999]

Subpart H—Grants for Development, Construction, and Operation of Facilities and Services

AUTHORITY: Secs. 104, 107, 25 U.S.C. 450h(b), 450k; Sec. 3, Pub. L. 83–568, 42 U.S.C. 2003.

SOURCE: 40 FR 53143, Nov. 14, 1975, unless otherwise noted. Redesignated at 67 FR 35342, May 17, 2002.

§ 136.101 Applicability.

The regulations of this subpart are applicable to grants awarded pursuant to section 104(b) of Pub. L. 93–638, 25 U.S.C. 450h(b) for (a) projects for development including feasibility studies, construction, operation, provision, or maintenance of services and facilities provided to Indians and, (b) for projects for planning, training, evaluation or other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 103 of the Act. Such grants may include the cost of training personnel to perform grant related activities.

§ 136.102 Definitions.

As used in this subpart:

(a) *Act* means Title I of the Indian Self-Determination and Education Assistance Act, Pub. L. 93–638 (88 Stat. 2203).

(b) *Indian* means a person who is a member of an Indian tribe.

(c) *Indian tribe* means any Indian tribe, band, nation, rancheria, Pueblo, colony or community, including any Alaska Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, Pub. L. 92–203 (85 Stat. 688 which is recognized as eligible by the United States Government for the special programs and services provided by the United States to Indians because of their status as Indians.

(d) *Tribal organization* means:

(1) The recognized governing body of any Indian tribe; or

(2) Any legally established organization of Indians which is:

(i) Controlled, sanctioned or chartered by such governing body or bodies; or

(ii) Democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

(e) *Secretary* means the Secretary of the Department of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

(f) *Grantee* means the tribe or tribal organization that receives a grant under section 104(b) of the Act and this subpart and assumes the legal and financial responsibility for the funds awarded and for the performance of the grant supported activity in accordance with the Act and these regulations.

(g) *Indian owned economic enterprise* means any commercial, industrial, or business activity established or organized for the purpose of profit which is not less than 51 percent Indian owned.

§ 136.103 Eligibility.

Any Indian tribe or tribal organization is eligible to apply for a grant under this subpart.

§ 136.104 Application.

(a) Forms for applying for grants are governed by 2 CFR 200.207.

(b) In addition to such other pertinent information as the Secretary may require, the application for a grant under this subpart shall contain the following:

(1) A description of the applicant including an indication whether the applicant is a Tribe or tribal organization, and if the latter:

(i) The legal and organizational relationship of the applicant to the Indians in the Area to be served or effected by the project.

(ii) A description of the current and proposed participation of Indians in the activities of applicant.

(iii) Whether applicant is controlled, sanctioned or chartered by the governing body of the Indians to be served, and if so, evidence of such fact.

(iv) If elected, a description of the election process, voting criteria, and extent of voter participation in the election designating the organization.

(2) A narrative description of the project including its goals and objectives and the manner in which the proposed project is compatible with published Indian Health Service statements of availability of funds, the manner in which those goals and objectives are to be attained, and a work and time schedule which will be utilized to accomplish each goal and objective.

(3) A description of applicant's staff, present or proposed, including their qualifications, academic training, responsibilities and functions.

(4) A description of the manner in which the staff is or will be organized and supervised to carry out proposed activities.

(5) A description of training to be provided as part of the proposed project.

(6) A description of the administrative, managerial, and organizational arrangements and resources to be utilized to conduct the proposed project.

(7) An itemized budget for the budget period (normally 12 months) for which support is sought and justification of the amount of grant funds requested.

(8) The intended financial participation, if any, of the applicant, specifying the type of contributions such as cash or services, loans of full or part-time staff, equipment, space materials or facilities, or other contributions.

(9) Where health services are to be provided, a description of the nature of the services to be provided and the population to be served.

(10) A description of the Federal property, real and personal, equipment, facilities and personnel which applicant proposes to utilize and a description of the arrangements which applicant has made or will make to assume responsibility for the operation and management of those facilities.

(c) The application shall contain assurances satisfactory to the Secretary that the applicant will:

(1) Where applicant is providing services, provide such services at a level and range which is not less than that provided by the Indian Health Service or that identified by the Service after negotiation with the applicant, as an appropriate level, range and standard of care.

(2) Where providing services, provide services in accordance with law and applicable Indian Health Service policies and regulations.

(3) Where providing services, provide services in a fair and uniform manner, consistent with medical need, to all Indian people.

(Approved by the Office of Management and Budget under control number 0915–0045)

[40 FR 53143, Nov. 14, 1975, as amended at 50 FR 1853, Jan. 14, 1985; 81 FR 3010, Jan. 20, 2016; 89 FR 80068, Oct. 2, 2024]

§ 136.105 Project elements.

A project supported under this subpart must:

(a) Have sufficient, adequately trained staff in relation to the scope of the project.

(b) Maintain a mechanism for dealing with complaints regarding the delivery of health services or performance of project activities.

(c) Hold confidential all information obtained by the personnel of the project from participants in the project related to their examination, care, and treatment, and shall not release such information without the individuals' consent except as may be required by law, as may be necessary to provide service to the individual, or as may be necessary to monitor the operations of this program or otherwise protect the public health. Information may be disclosed in a form which does not identify particular individuals.

(d) Operate with the approval, support, and involvement of the tribe, tribes, or Indian communities in the area served by the local facility and program.

(e) Keep in force adequate liability insurance in accordance with the approved application unless the Secretary, for good cause shown, has determined that such insurance was not

obtainable or appropriate or has determined that such insurance may be permitted to expire or lapse. The insurance shall provide that prior to cancellation the Secretary must be notified and must further provide that for each such policy of insurance the carrier shall waive any right it may have to raise as a defense the tribe's sovereign immunity from suit but such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower the insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance.

NOTE 1 TO PARAGRAPH (e): This provision is excepted from application of 2 CFR 200.304 by section 103(c) of Pub. L. 93–638.

(f) Provide services at a level and range which is not less than that provided by the Indian Health Service or that identified by the Service as an appropriate level, range, and standard of care.

[40 FR 53143, Nov. 14, 1975, as amended at 50 FR 1854, Jan. 14, 1985; 81 FR 3010, Jan. 20, 2016; 89 FR 80068, Oct. 2, 2024]

§ 136.106 Grant award and evaluation.

(a) Within the limits of funds determined by the Secretary to be available for such purpose, the Secretary may award grants under this subpart to applicants whose project will, in the judgment of the Secretary, best promote the purposes of the Act, and the regulations of this subpart, taking into account:

(1) The apparent capability of the applicant to organize and manage the proposed project successfully considering, among other things the adequacy of staff, management systems, equipment and facilities.

(2) The soundness of the applicant's plan for conducting the project and for assuring effective utilization of grant funds.

(3) The adequacy of the budget in relation to the scope of the project and available funds.

(4) The relative effectiveness of the applicant's plan, as set forth in the application, to carry out each of the requirements § 136.105.

(5) The compatibility of the proposed project with the published goals and responsibilities of the IHS in carrying out its statutory mission.

(b) The Notice of Grant Awards specifies how long the Secretary intends to support the project period without requiring the project to re-compete for funds. This period, called the project period, will usually be for one to two years. The total project period comprises the original project period and any extension. Generally the grant will be for a one-year budget period, any subsequent award will also be a one-year budget period. A grantee must submit a separate application for each subsequent year. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, awards require a determination by the Secretary that funding is in the best interest of the Federal Government.

(c) Neither the approval of any application nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation or other award with respect to any approved application or portion of an approved application.

[40 FR 53143, Nov. 14, 1975, as amended at 50 FR 1854, Jan. 14, 1985. Redesignated and amended at 67 FR 35342, May 17, 2002]

§ 136.107 Use of project funds.

(a) A grantee shall only spend funds it receives under this subpart according to the approved application and budget, the regulations of this subpart, the terms and conditions of the award and the applicable cost principles prescribed in 2 CFR parts 200 and 300, subpart E.

(b) The provisions of any other Act notwithstanding, any funds made available to a tribal organization under grants pursuant to section 104(b) of the Act may be used as matching shares for any other Federal grant programs which contribute to the purposes for which grants under this section are made.

NOTE 1 TO PARAGRAPH (b): This provision is excepted from application of 2 CFR 200.306 by section 104(c) of Pub. L. 93–638.

[40 FR 53143, Nov. 14, 1975, as amended at 50 FR 1854, Jan. 14, 1985; 81 FR 3010, Jan. 20, 2016; 89 FR 80068 Oct. 2, 2024]

§ 136.108 [Reserved]

§ 136.109 Availability of appropriations.

The Secretary will from time to time publish a notice in the FEDERAL REGISTER indicating by areas the allotment of funds and categories of activities for which awards may be made under this subpart. The Secretary may revise such allotments and categories from time to time and will promptly publish a notice of such revisions in the FEDERAL REGISTER.

§ 136.110 Facilities construction.

In addition to other requirements of this subpart:

(a) An applicant for a construction grant to build, renovate, modernize, or remodel a hospital, clinic, health station or quarters for housing personnel associated with such facilities, must in its application:

(1) Provide its assessment of the environmental impact of the project as called for by section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(c)).

(2) Furnish its evaluation of the project site in accordance with the terms and conditions of E.O. 11296, 31 FR 10663 (August 10, 1966) relating to the evaluation of flood hazards in locating federally owned or financed facilities.

(b) The following requirements are applicable to each construction grant to build, renovate, modernize, or remodel a hospital, clinic, health station or quarters for housing personnel associated with such facilities.

(1) Competitive bids. The approval of the Secretary shall be obtained before the project is advertised or placed on the market for bidding. The approval shall include a determination by the Secretary that the final plan and specifications conform to the minimum standards of construction and equipment specified in the grant award or in HHS documents specified in the grant award.

(2) There will be no preference given to local contractors or suppliers over non-local contractors or suppliers, except as otherwise provided in these regulations.

(3) Construction contracts and subcontracts under this program are subject to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*). For requirements that grantees must observe for enforcing compliance by contractors and subcontractors, see the section on contract provisions in the procurement standards for HHS grantees made applicable by 2 CFR 200.317 through 200.327.

(4) Minimum standards of construction and equipment. The plans and specifications for the project will conform to the minimum standards of construction and equipment specified in the grant award or in HHS documents specified in the grant award.

(5) The following provision must be included in all construction contracts let by the grantee: ''The Secretary of the Department of Health and Human Services shall have access at all reasonable times to work wherever it is in preparation or progress, and the contractor shall provide proper facilities for such access and inspection.''

[40 FR 53143, Nov. 14, 1975, as amended at 50 FR 1854, Jan. 14, 1985; 81 FR 3010, Jan. 20, 2016; 89 FR 80068, Oct. 2, 2024]

§ 136.111 Interest.

Tribes and Tribal organizations shall not be held accountable for interest earned on grant funds, pending disbursement by such organization.

NOTE 1 TO § 136.111: This provision is excepted from application of 2 CFR 200.305(b)(12) by section 106(b) of Pub. L. 93–638.

[40 FR 53143, Nov. 14, 1975, as amended at 50 FR 1854, Jan. 14, 1985; 81 FR 3010, Jan. 20, 2016; 89 FR 80068, Oct. 2, 2024]

§ 136.112 Additional conditions.

The Secretary may with respect to any grant award impose additional conditions prior to or at the time of any award when in his judgment such conditions are necessary to assure or protect advancement of the approved project, the interests of public health, or the conservation of grant funds.

§ 136.113 Fair and uniform provision of services.

Services provided pursuant to a grant under this subpart shall be provided by the Grantee in a fair and uniform manner to all participants in the project consistent with their medical need, the policies and regulations of the Indian Health Service, and the Act.

§ 136.114 Applicability of other Department regulations.

Several other regulations apply to grants under this subpart. These include to the extent applicable but are not limited to:

2 CFR parts 200 and 300—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
42 CFR part 50, subpart D, Public Health Service grant appeals procedure
45 CFR part 16, Procedures of the Departmental Grant Appeals Board
45 CFR part 84, Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR part 86, Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR part 91, Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

NOTE: To the extent they provide special benefits to Indians, grants under this subpart are exempted from the requirements of section 601 of the Civil Rights Act of 1964 [42 U.S.C. 200d], prohibiting discrimination on the basis of race, color or national origin, by regulation at 45 CFR 80.3(d) which provides, with respect to Indian health services, that, ''An individual shall not be deemed subjected to discrimination by reasons of his exclusion from the benefits of a program limited by Federal law to individuals of a particular race, color, or national origin different from his.

[50 FR 1854, Jan. 14, 1985, as amended at 81 FR 3010, Jan. 20, 2016; 89 FR 80068, Oct. 2, 2024]

§ 136.115 Rescission of grants.

(a) When the Secretary determines that the performance of a grantee under these regulations involves (1) the violation of the rights or endangerment of the health, safety, or welfare of any persons, or (2) gross negligence or the mismanagement in the handling or use of funds under the grant, the Secretary will, in writing, notify the grantee of such determination and will request that the grantee take such corrective action, within such period of time, as the Secretary may prescribe.

(b) When the Secretary determines that a grantee has not taken corrective action (as prescribed by him under paragraph (a) of this section) to his satisfaction, he may, after providing the grantee an opportunity for a hearing in accordance with paragraph (c) of this section, rescind the grant in whole or in part and if he deems it appropriate, assume or resume control or operation of the program, activity, or service involved.

(c) When the Secretary has made a determination described in paragraph (b) of this section, he shall in writing notify the grantee of such determination and of the grantee's right to request a review of such determination (and of the determination described in paragraph (a) of this section) under the Public Health Service Grant Appeals Procedure (42 CFR part 50, subpart D). Such notification by the Secretary shall set forth the reasons for the determination in sufficient detail to enable the grantee to respond and shall inform the grantee of its opportunity for review under such subpart D. If the review held under subpart D results in a response adverse to the grantee's position, the grantee shall be informed of its right to have a hearing before the Department Grant Appeals Board, pursuant to 45 CFR part 16.

(d) Where the Secretary determines that a grantee's performance under a grant awarded under this subpart poses an immediate threat to the safety of any person, he may immediately rescind the grant in whole or in part and if he deems it appropriate, assume or resume control or operation of the program, activity, or service involved. Upon such recission he will immediately notify the grantee of such action and the basis or reasons therefor; and offer the grantee an opportunity for a hearing to be held within 10 days of such action. If the grantee requests such a hearing, the Secretary will designate three officers or employees of the Department to serve as a hearing panel. No officer or employee from the

immediate office of the official who made the decision to rescind the grant under this paragraph may be designated to serve on the hearing panel.

(1) The hearing shall be commenced within 10 days after the recission of the grant, shall be held on the record and shall afford the grantee the right:

(i) To notice of the issues to be considered;

(ii) To be represented by counsel;

(iii) To present witnesses on grantee's behalf; and

(iv) To cross-examine other witnesses either orally or through written interrogatories.

(2) The hearing panel shall, within 25 days after the conclusion of the hearing, notify all parties in writing of its decision.

(3) Such decision shall not be subject to further hearing under 42 CFR part 50, subpart D or 45 CFR part 16.

(e) In any case where the Secretary has rescinded a grant under paragraph (b) or (d) of this section, he may decline to enter into a new grant agreement with the grantee until such time as he is satisfied that the basis for the recission has been corrected. Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

(f) In any case where the Secretary has rescinded a grant for the delivery of health services under this subpart, the grantee shall, upon the request of the Secretary, transfer to the Secretary all medical records compiled in the operation of the supported project.

NOTE 1 TO §136.115: This section is an exception to 2 CFR 200.339 through 200.344 required by section 109 of Pub. L. 93–638.

[40 FR 53143, Nov. 14, 1975, as amended at 50 FR 1855, Jan. 14, 1985; 81 FR 3010, Jan. 20, 2016; 89 FR 80068, Oct. 2, 2024]

§136.116 Reports.

In addition to the reporting and information requirements provided in 2 CFR 200.328 through 200.333 made applicable to grants under this subpart by §136.114, each recipient of Federal financial assistance shall make such reports and information available to the Indian people served or represented by such recipient as and in a manner determined by the Secretary to be adequate.

NOTE 1 TO §136.116: This section is a requirement in addition to 2 CFR parts 200 and 300 and is required by section 5(c) of Pub. L. 93–638.

[40 FR 53143, Nov. 14, 1975, as amended at 50 FR 1855, Jan. 14, 1985. Redesignated and amended at 67 FR 35342, May 17, 2002; 81 FR 3010, Jan. 20, 2016; 89 FR 80069, Oct. 2, 2024]

§136.117 Amendment of regulations.

Before revising or amending the regulations in this subpart, the Secretary shall take the following actions:

(a) Consult with Indian Tribes and national and regional Indian organizations to the extent practicable about the need for revision or amendment and consider their views in preparing the proposed revision or amendment.

(b) Present the proposed revision or amendment to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

(c) Publish the proposed revisions or amendments in the FEDERAL REGISTER as proposed rulemaking to provide adequate notice to receive comments from, all interested parties.

(d) After consideration of all comments received, publish the regulations in the FEDERAL REGISTER in final form not less than 30 days before the date they are made effective.

§136.118 Effect on existing rights.

The regulations in this part are not meant to and do not:

(a) Affect, modify, diminish, or otherwise impair the sovereign immunity from suit enjoyed by an Indian tribe;

(b) Authorize, require or permit the termination of any existing trust responsibility of the United States with respect to the Indian people;

(c) Permit significant reduction in services to Indian people as a result of this subpart.

§136.119 Penalties.

Section 6 of Pub. L. 93–638, 25 U.S.C. 450(d) provides:

Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any recipient of a contract, subcontract, grant, or subgrant pursuant to this Act or the Act of April 16, 1934 (48 Stat. 596),

as amended, embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds, assets, or property which are the subject of such a grant, subgrant, contract, or subcontract, shall be fined not more than $10,000 or imprisoned for not more than two years, or both, but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§ 136.120 Use of Indian business concerns.

Grants awarded pursuant to this subpart will incorporate the following:

Use of Indian business concerns.

(a) As used in this clause, the term ''Indian organizations of an Indian-owned economic enterprise'' as defined in section 102(g) of this subpart.

(b) The grantee agrees to give preference to qualified Indian business concerns in the awarding of any contracts, subcontracts or subgrants entered into under the grant consistent with the efficient performance of the grant. The grantee shall comply with any preference requirements regarding Indian business concerns established by the tribe(s) receiving services under the grant to the extent that such requirements are consistent with the purpose and intent of this paragraph.

NOTE 1 TO §1366.120: This section is an exception to 2 CFR parts 200 and 300, required by section 7(b) of Pub. L. 93–638.

[40 FR 53143, Nov. 14, 1975, as amended at 50 FR 1855, Jan. 14, 1985; 81 FR 3011, Jan. 20, 2016; 89 FR 80069, Oct. 2, 2024]

§ 136.121 Indian preference in training and employment.

(a) Any grant made under this subpart, or a contract or subgrant made under such a grant shall require that, to the greatest extent feasible preferences and opportunities for training and employment in connection with the administration of such grant, or contract or subgrant made under such grant, shall be given to Indians.

(b) The grantee shall include the requirements of paragraph (a) of this section in all contracts and subgrants made under a grant awarded under this subpart.

Subpart I—Limitation on Charges for Health Care Professional Services and Non-Hospital-Based Care

SOURCE: 81 FR 14982, Mar. 21, 2016, unless otherwise noted.

§ 136.201 Applicability.

The requirements of this Subpart shall apply to:

(a) Health programs operated by the Indian Health Service (IHS).

(b) Health programs operated by an urban Indian organization through a contract or grant under Title V of the Indian Health Care Improvement Act (IHCIA), Public Law 94–437, as amended.

(c) Health programs operated by an Indian Tribe or Tribal organization pursuant to a contract or compact with the IHS under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), provided that the Indian Tribe or Tribal organization has agreed in such contract or compact to be bound by this Subpart pursuant to 25 U.S.C. 450l and 458aaa–16(e), as applicable.

§ 136.202 Definitions.

For purposes of this subpart, the following definitions apply.

Notification of a claim means, for the purposes of part 136, and also 25 U.S.C. 1621s and 1646, the submission of a claim that meets the requirements of 42 CFR 136.24.

(1) Such claims must be submitted within the applicable time frame specified by 42 CFR 136.24, or if applicable, 25 U.S.C. 1646, and include information necessary to determine the relative medical need for the services and the individual's eligibility.

(2) The information submitted with the claim must be sufficient to:

(i) Identify the patient as eligible for IHS services (*e.g.*, name, address, home or referring service unit, Tribal affiliation),

(ii) Identify the medical care provided (*e.g.*, the date(s) of service, description of services), and

(iii) Verify prior authorization by the IHS for services provided (*e.g.*, IHS purchase order number or medical referral

form) or exemption from prior authorization (*e.g.,* copies of pertinent clinical information for emergency care that was not prior-authorized).

(3) To be considered sufficient notification of a claim, claims submitted by providers and suppliers for payment must be in a format that complies with the format required for submission of claims under title XVIII of the Social Security Act (42 U.S.C. 1395 *et seq.*) or recognized under section 1175 of such Act (42 U.S.C. 1320d–4).

Provider, as used in this subpart only, means a provider of services not governed by or subject to 42 CFR part 136 subpart D, and may include, but not limited to, a skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, or hospice program.

Referral means an authorization for medical care by the appropriate ordering official in accordance with 42 CFR part 136 subpart C.

Repricing agent means an entity that offers an IHS, Tribe or Tribal organization, or urban Indian organization (I/T/U) discounted rates from non-I/T/U public and private providers as a result of existing contracts that the non-I/T/U public or private provider may have within the commercial health care industry.

Supplier, as used in this subpart only, means a physician or other practitioner, a facility, or other entity (other than a provider) not already governed by or subject to 42 CFR part 136 subpart D, that furnishes items or services under this Subpart.

§ 136.203 Payment for provider and supplier services purchased by Indian health programs.

(a) Payment to providers and suppliers not covered by 42 CFR part 136 subpart D, for any level of care authorized under part 136, subpart C by a Purchased/Referred Care (PRC) program of the IHS; or authorized by a Tribe or Tribal organization carrying out a PRC program of the IHS under the Indian Self-Determination and Education Assistance Act, as amended, Public Law 93–638, 25 U.S.C. 450 *et seq.;* or authorized for purchase under §136.31 by an urban Indian organization (as that term is defined in 25 U.S.C. 1603(h)) (hereafter collectively ''I/T/U''), shall be determined based on the applicable method in this section:

(1) If a specific amount has been negotiated with a specific provider or supplier or its agent by the I/T/U, the I/T/U will pay that amount, provided that such amount is equal to or better than the provider or supplier's Most Favored Customer (MFC) rate, as evidenced by commercial price lists or paid invoices and other related pricing and discount data to ensure that the I/T/U is receiving a fair and reasonable price. The MFC rate limitation shall not apply if:

(i) The prices offered to the I/T/U are fair and reasonable, as determined by the I/T/U, even though comparable discounts were not negotiated; and

(ii) The award is otherwise in the best interest of the I/T/U, as determined by the I/T/U.

(2) If an amount has not been negotiated in accordance with paragraph (a)(1) of this section, the I/T/U will pay the lowest of the following amounts:

(i) The applicable Medicare payment amount, including payment according to a fee schedule, a prospective payment system or based on reasonable cost (''Medicare rate'') for the period in which the service was provided, or in the event of a Medicare waiver, the payment amount will be calculated in accordance with such waiver.

(ii) An amount negotiated by a repricing agent if the provider or supplier is participating within the repricing agent's network and the I/T/U has a pricing arrangement or contract with that repricing agent.

(iii) An amount not to exceed the provider or supplier's MFC rate, as evidenced by commercial price lists or paid invoices and other related pricing and discount data to ensure that the I/T/U is receiving a fair and reasonable price, but only to the extent such evidence is reasonably accessible and available to the I/T/U.

(3) In the event that a Medicare rate does not exist for an authorized item or service, and no other payment methodology provided for in paragraph (a)(1) or (2) of this section are accessible or available, the allowable amount shall be deemed to be 65% of authorized charges.

(b) Coordination of benefits and limitation on recovery: If an I/T/U has authorized payment for items and services provided to an individual who is eligible for benefits under Medicare, Medicaid, or another third party payer—

(1) The I/T/U is the payer of last resort under 25 U.S.C. 1623(b);

(2) If there are any third party payers, the I/T/U will pay the amount for which the patient is being held responsible after the provider or supplier of services has coordinated benefits and all other alternate resources have been considered and paid, including applicable co-payments, deductibles, and coinsurance that are owed by the patient;

(3) The maximum payment by theI/T/U will be only that portion of the payment amount determined under this section not covered by any other payer;

(4) The I/T/U payment will not exceed the rate calculated in accordance with paragraph (a) of this section (plus applicable cost sharing); and

(5) When payment is made by Medicaid it is considered payment in full and there will be no additional payment made by the I/T/U to the amount paid by Medicaid.

(c) Authorized services: Payment shall be made only for those items and services authorized by an I/T/U consistent with this part 136 or section 503(a) of the IHCIA, Public Law 94–437, as amended, 25 U.S.C. 1653(a).

(d) No additional charges:

(1) If an amount has not been negotiated under paragraph (a)(1) of this section, the health care provider or supplier shall be deemed to have accepted the applicable payment amount under paragraph (a)(2) of this section as payment in full if:

(i) The services were provided based on a Referral, as defined in §136.202; or,

(ii) The health care provider or supplier submits a Notification of a Claim for payment to the I/T/U; or

(iii) The health care provider or supplier accepts payment for the provision of services from the I/T/U.

(2) A payment made and accepted in accordance with this section shall constitute payment in full and the provider or its agent, or supplier or its agent, may not impose any additional charge—

(i) On the individual for I/T/U authorized items and services; or

(ii) For information requested by the I/T/U or its agent or fiscal intermediary for the purposes of payment determinations or quality assurance.

(e) IHS will not adjudicate a notification of a claim that does not contain the information required by §136.24 with an approval or denial, except that IHS may request further information from the individual, or as applicable, the provider or supplier, necessary to make a decision. A notification of a claim meeting the requirements specified herein does not guarantee payment.

(f) No service shall be authorized and no payment shall be issued in excess of the rate authorized by this section.

§ 136.204 Authorization by an urban Indian organization.

An urban Indian organization may authorize for purchase items and services for an eligible urban Indian as those terms are defined in 25 U.S.C. 1603(f) and (h) according to section 503 of the IHCIA and applicable regulations. Services and items furnished by physicians and other health care professionals and non-hospital-based entities shall be subject to the payment methodology set forth in §136.203.

Subpart J—Indian Health Care Improvement Act Programs

AUTHORITY: Secs. 102, 103, 106, 502, 702, and 704 of Pub. L. 94–437 (25 U.S.C. 1612, 1613, 1615, 1652, 1672 and 1674); sec. 338G of the Public Health Service Act, 95 Stat. 908 (42 U.S.C. 254r).

SOURCE: 42 FR 59646, Nov. 18, 1977, unless otherwise noted. Redesignated at 67 FR 35342, May 17, 2002.

SUBDIVISION J–1—PROVISIONS OF GENERAL AND SPECIAL APPLICABILITY

§ 136.301 Policy and applicability.

(a) *Policy*. (1) It is the policy of the Secretary to encourage Indians to enter the health professions and to ensure the availability of Indian health professionals to serve Indians. The recruitment and scholarship programs under this subpart will contribute to this objective.

(2) The regulations of this subpart are intended to be consistent with principles of Indian self-determination and to supplement the responsibilities of the Indian Health Sevice for Indian health manpower planning and for assisting Indian tribes and tribal organizations in the development of Indian manpower programs.

(b) *Applicability*. The regulations of this subpart are applicable to the following activities authorized by the Indian Health Care Improvement Act:

(1) The award of health professions recruitment grants under section 102 of the Act to recruit Indians into the health professions (Subdivision J–2);

(2) The award of preparatory scholarship grants and pregraduate scholarship grants under section 103 of the Act, as amended, to Indians undertaking compensatory and preprofessional education (Subdivisions J–3 and J–8);

(3) The award of Indian Health Scholarship grants pursuant to section 338G of the Public Health Service Act (42 U.S.C. 254r) to Indian or other students in health professions schools (Subdivision J–4):

(4) The provision of continuing education allowances to health professionals employed by the Service under section 106 of the Act (Subdivision J–5);

(5) Contracts with urban Indian organizations under section 502 of the Act to establish programs in urban areas to make health services more accessible to the urban Indian population (Subdivision J–6); and

(6) Leases with Indian tribes under section 704 of the Act (Subdivision J–7).

[42 FR 59646, Nov. 18, 1977, as amended at 49 FR 7381, Feb. 29, 1984; 50 FR 1855, Jan. 14, 1985]

§ 136.302 Definitions.

As used in this subpart: (a) *Act* means the Indian Health Care Improvement Act, Pub. L. 94–437 (25 U.S.C. 1601 *et seq.*).

(b) *Academic year* means the traditional approximately 9 month September to June annual session, except for students who attend summer session in addition to the traditional academic year during a 12 month period, for whom the academic year will be considered to be of approximately 12 months duration.

(c) [Reserved]

(d) *Compensatory preprofessional education* means any preprofessional education necessary to compensate for deficiencies in an individual's prior education in order to enable that individual to qualify for enrollment in a health professions school.

(e) *Health or educational entity* means an organization, agency, or combination thereof, which has the provision of health or educational programs as one of its major functions.

(f) *Health professions school* means any of the schools defined in paragraphs (m), (n), or (o) of this section.

(g) *Hospital* means general, tuberculosis, mental, and other types of hospitals, and related facilities such as laboratories, outpatient departments, extended care facilities, facilities related to programs for home health services, self-care units, education or training facilities for health professions personnel operated as an integral part of a hospital, and central services facilities operated in connection with hospitals, but does not include any hospital providing primarily domicillary care.

(h) *Indian* or *Indians* means, for purposes of Subdivisions J–2, J–3, J–4, and J–8 of this subpart, any person who is a member of an Indian tribe, as defined in parargraph (i) of this section or any individual who (1), irrespective of whether he or she lives on or near a reservation, is a member of a tribe, band or other organized group terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is the natural child or grandchild of any such member, or (2) is an Eskimo or Aleut or other Alaska Native, or (3) is considered by the Secretary of the Interior to be an Indian for any purpose, or (4) is determined to be an Indian under regulations promulgated by the Secretary.

(i) *Indian health organization* means a nonprofit corporate body composed of Indians which provides for the maximum participation of all interested Indian groups and individuals and which has the provision of health programs as its principal function.

(j) *Indian tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaska native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(k) *Nonprofit* as applied to any private entity means that no part of the net earnings of such entity inures or may lawfully inure to the benefit of any private shareholder or individual.

(l) [Reserved]

(m) *School of allied health professions* means a junior college, college, or university—

(1) Which provides, or can provide, programs of education leading to a certificate, or to an associate or baccalaureate degree (or the equivalent or either), or to a higher degree for preparing personnel with responsibilities for supporting, complementing, or supplementing the professional functions of physicians, dentists, and other health professionals in the delivery of health care to patients or assisting environmental engineers and others in environmental health control and preventive medicine activities.

(2) Which, if in a college or univerisity which does not include a teaching hospital or in a junior college, is affiliated through a written agreement with one or more hospitals which provide the hospital component of the clinical training required for completion of such programs of education. The written agreement shall be executed by individuals authorized to act for their respective institutions and to assume on behalf of their institution the obligations imposed by such agreement. The agreement shall provide:

(i) A description of the responsibilities of the school of allied health professions, the responsibilities of the hospital, and their joint responsibilities with respect to the clinical components of such programs of education; and

(ii) A description of the procedure by which the school of allied health professions and the hospital will coordinate the academic and clinical training of students in such programs of education; and

(iii) That, with respect to the clinical component of each such program of education, the teaching plan and resources have been jointly examined and approved by the appropriate faculty of the school of allied health professions and the staff of the hospital.

(3) Which is accredited or assured accreditation by a recognized body or bodies approved for such purpose by the Commissioner of Education of the Department of Health and Human Services.

(n) *School of medicine*, *school of dentistry*, *school of osteopathy*, *school of pharmacy*, *school of optometry*, *school of podiatry*, *school of veterinary medicine*, and *school of public health* means a school which provides training leading, respectively, to a degree of doctor of medicine, a degree of doctor of dental surgery or an equivalent degree, a degree of doctor of osteopathy, a degree of bachelor of science in pharmacy or an equivalent degree, a degree of doctor of podiatry or an equivalent degree, and graduate degree in public health, and including advanced training related to such training provided by any such school, and is accredited or assured accreditation by a recognized body or bodies approved for such purpose by the Commissioner of Education of the Department of Health and Human Services.

(o) *School of nursing* means a collegiate, associate degree, or diploma school of nursing, as those terms are defined below:

(1) The term *collegiate school of nursing* means a department, division, or other administrative unit in a college or university which provides primarily or exclusively a program of education in professional nursing and allied subjects leading to the degree of bachelor of arts, bachelor of science, bachelor of nursing, or to an equivalent degree, or to a graduate degree in nursing, and including advanced training related to such program of education provided by such school, but only if such program, or such unit, college or university is accredited;

(2) The term *associated degree school of nursing* means a department, division, or other administrative unit in a

junior college, community college, college, or university which provides primarily or exclusively a two-year program of education in professional nursing and allied subjects leading to an associate degree in nursing or to an equivalent degree, but only if such program, or such unit, college or university is accredited;

(3) The term *diploma school of nursing* means a school affiliated with a hospital or university, or an independent school, which provides primarily or exclusively a program of education in professional nursing and allied subjects leading to a diploma or to equivalent indicia that such program has been satisfactorily completed, but only if such program, or such affiliated school or such hospital or university or such independent school is accredited.

(4) The term *accredited* as used in this subsection when applied to any program of nurse education means a program accredited or assured accreditation by a recognized body or bodies, or by a State agency, approved for such purpose by the Commissioner of Education of the Department of Health and Human Services and when applied to a hospital, school, college, or university (or a unit thereof) means a hospital, school, college, or university (or a unit thereof) which is accredited or assured accreditation by a recognized body or bodies, or by a State agency, approved for such purpose by the Commissioner of Education of the Department of Health and Human Services.

(p) *Secretary* means the Secretary of Health and Human Services and any other Officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

(q) *Service* means the Indian Health Service.

(r) *State or local government* means any public health or educational entity which is included within the definition of State or local government in 2 CFR 200.1 and Indian tribes or tribal organizations.

(s) *Tribal organization* means the elected governing body of any Indian tribe or any legally established organization of Indians which is controlled by one or more such bodies or by a board of directors elected or selected by one or more such bodies (or elected by the Indian population to be served by such organization) and which includes the maximum participation of Indians in all phases of its activities.

(t) *Urban center* means any city, with a population of 10,000 or more as determined by the United States Census Bureau, which the Secretary determines has a sufficient urban Indian population with unmet health needs to warrant assistance under title V of the Act.

(u) *Urban Indian* means any individual who resides in an urban center, as defined in paragraph(s) of this section, and who meets one or more of the four criteria in paragraphs (h) (1) through (4) of this section.

(v) *Urban Indian organization* means a nonprofit corporate body situated in an urban center which:

(1) Is governed by an Indian controlled board of directors:

(2) Has the provision of health programs as:

(i) Its principal function, or

(ii) One of its major functions and such health progams are administered by a distinct organizational unit within the organization.

(3) Provides for the maximum participation of all interested Indian groups and individuals; and

(4) Is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in §36.350(a) of Subdivision J–6 of this subpart. Except, that criteria (2) and (3) of this subsection shall not apply to an organization administering an urban Indian health project under a contract with the Secretary prior to October 1, 1977, for the period of such contract or until July 1, 1978, whichever is later.

[42 FR 59646, Nov. 18, 1977, as amended at 49 FR 7381, Feb. 29, 1984; 50 FR 1855, Jan. 14, 1985; 81 FR 3011, Jan. 20, 2016; 89 FR 80069, Oct. 2, 2024]

§136.303 Indians applying for scholarships.

(a) For purposes of scholarship grants under Subdivisions J–3 and J–4 of this subpart, Indian applicants must submit evidence of their tribal membership (or other evidence that that applicant is an Indian as defined in paragraph (h) of

§136.302 of this subdivision) satisfactory to the Secretary.

(b) Where an applicant is a member of a tribe recognized by the Secretary of the Interior, the applicant must submit evidence of his or her tribal membership, such as:

(1) Certification of tribal enrollment by the Secretary of the Interior acting through the Bureau of Indian Affairs (BIA); or

(2) In the absence of such BIA certification, documentation that the applicant meets the requirements of tribal membership as prescribed by the charter, articles of incorporation or other legal instrument of the tribe and has been officially designated a tribal member by an authorized tribal official; or

(3) Other evidence of tribal membership satisfactory to the Secretary.

(c) Where the applicant is a member of a tribe terminated since 1940 or a State recognized tribe, the applicant must submit documentation that the applicant meets the requirements of tribal membership as prescribed by the charter, articles of incorporation or other legal instrument of the tribe and has been officially designated a tribal member by an authorized tribal official; or other evidence, satisfactory to the Secretary, that the applicant is a member of the tribe. In addition, if the terminated or State recognized tribe of which the applicant is a member is not on a list of such tribes published by the Secretary in the FEDERAL REGISTER. the applicant must submit documentation as may be required by the Secretary that the tribe is a tribe terminated since 1940 or is recognized by the State in which the tribe is located in accordance with the law of that State.

(d) An applicant who is not a tribal member, but who is a natural child or grandchild of a tribal member as defined in paragraph (h) of §36.302 of this subdivision must submit evidence of such fact which is satisfactory to the Secretary, in addition to evidence of his or her parent's or grandparent's tribal membership in accordance with paragraphs (b) and (c) of this section.

[42 FR 59646, Nov. 18, 1977. Redesignated and amended at 67 FR 35342, May 17, 2002]

§ 136.304 Publication of a list of allied health professions.

The Secretary, acting through the Service, shall publish from time to time in the FEDERAL REGISTER a list of the allied health professions for consideration for the award of preparatory and Indian Health scholarships under subdivisions J–3 and J–4 of this Subpart, based upon his determination of the relative needs of Indians for additional service in specific allied health professions. In making that determination, the needs of the Service will be given priority consideration.

§ 136.305 Additional conditions.

The Secretary may, with respect to any grant award under this subpart, impose additional conditions prior to or at the time of any award when in his judgment such conditions are necessary to assure or protect advancement of the approved project, the interests of the public health, or the conservation of grant funds.

NOTE: *Nondiscrimination*. Grants and contracts under this subpart are exempted from the requirements of section 601 of the Civil Rights Act of 1964 (42 U.S.C. 2000d), prohibiting discrimination on the basis of race, color or national origin, by regulation at 45 CFR 80.3(d) which provides, with respect to Indian Health Services, that ''An individual shall not be deemed subjected to discrimination by reason of his exclusion from the benefits of a program limited by Federal law to individuals of a particular race, color, or national origin different from his.''

[42 FR 59646, Nov. 18, 1977, as amended at 50 FR 1855, Jan. 14, 1985]

SUBDIVISION J–2—HEALTH PROFESSIONS RECRUITMENT PROGRAM FOR INDIANS

§ 136.310 Health professions recruitment grants.

Grants awarded under this subdivision, in accordance with section 102 of the Act, are for the purpose of assisting in meeting the costs of projects to:

(a) Identify Indians with a potential for education or training in the health professions and encouraging and assisting them (1) To enroll in schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, pharmacy, public health, nursing, or allied health professions; or (2), if they are not qualified to enroll in any such

school, to undertake such post-secondary education or training as may be required to qualify them for enrollment;

(b) Publicize existing sources of financial aid available to Indians enrolled in any school referred to in paragraph (a)(1) of this section or who are undertaking training necessary to qualify them to enroll in any such school; or

(c) Establish other programs which the Secretary determines will enhance and facilitate the enrollment of Indians, and the subsequent pursuit and completion by them of courses of study, in any school referred to in paragraph (a)(1) of this section.

§ 136.311 Eligibility.

Any Indian tribe, tribal organization, urban Indian organization, Indian health organization or any public or other nonprofit private health or educational entity is eligible to apply for a health professions recruitment grant under this subdivision.

§ 136.312 Application.

(a) Forms for applying for grants are governed by 2 CFR 200.207 [1]

(b) In addition to such other pertinent information as the Secretary may require, the application for a health professions recruitment grant shall contain the following:

(1) A description of the legal status and organization of the applicant;

(2) A description of the current and proposed participation of Indians (if any) in the applicant's organization.

(3) A description of the target Indian population to be served by the proposed project and the relationship of the applicant to that population;

(4) A narrative description of the nature, duration, purpose, need for and scope of the proposed project and of the manner in which the applicant intends to conduct the project including:

(i) Specific measurable objectives for the proposed project;

(ii) How the described objectives are consistent with the purposes of section 102 of the Act;

(iii) The work and time schedules which will be used to accomplish each of the objectives;

(iv) A description of the administrative, managerial, and organizational arrangements and the facilities and resources to be utilized to conduct the proposed project;

(v) The name and qualifications of the project director or other individual responsible for the conduct of the project; the qualifications of the prinicipal staff carrying out the project; and a description of the manner in which the applicant's staff is or will be organized and supervised to carry out the proposed project;

(5) An itemized budget for the budget period (normally 12 months) for which support is sought and justification of the amount of grant funds requested:

(6) The intended financial participation, if any, of the applicant in the proposed project specifying the type of contributions such as cash or services, loans of full or part-time staff, equipment, space, materials or facilities or other contributions;

(7) When the target population of a proposed project includes a particular Indian tribe or tribes, an official document in such form as is prescribed by the tribal governing body of each such tribe indicating that the tribe or tribes will cooperate with the applicant.

(c) In the case of proposed projects for identification of Indians with a potential for education or training in the health professions, applications must include a method of assessing the potential of interested Indians for undertaking necessary education or training in the health professions. Proposed projects may include, but are not limited to, the following activities:

(1) Identifying Indian elementary and secondary school students through observations, aptitude or other testing, academic performance, performance in special projects and activities, and other methods as may be designed or developed;

(2) Identifying Indians in college or university programs, related employment, upward mobility programs or

[1] Applications and instructions may be obtained from the appropriate Indian Health Service Area or Program Office or by writing the Director, Indian Health Service, Room 5A–55, 5600 Fishers Lane, Rockville, MD 20857.

other areas of activity indicative of interest and potential;

(3) Review of the upward mobility plans, skills, banks etc. of organizations employing Indians to identify individuals with appropriate career orientations, expression of interest, or recognized potential;

(4) Conducting workshops, health career days, orientation projects or other activities to identify interested Indians at any age level;

(5) Performing liaison activities with Indian professional organizations, Indian education programs (including adult education), Indian school boards, Indian parent, youth recreation or community groups, or other Indian special interest or activity groups;

(6) Identifying those Indians with an interest and potential who cannot undertake compensatory education or training in the health professions because of financial need.

(d) Proposed projects designed to encourage and assist Indians to enroll in health professions schools; or, if not qualified to enroll, to undertake post-secondary education or training required to qualify them for enrollment may include, but are not limited to, the following activities:

(1) Providing technical assistance and counseling to encourage and assist Indians identified as having a potential for education or training in the health professions—

(i) To enroll in health professions schools.

(ii) To undertake any post-secondary education and training required to qualify them to enroll in health professions schools, and

(iii) To obtain financial aid to enable them to enroll in health professions schools or undertake post-secondary education or training required to qualify them to enroll in such schools;

(2) Conducting programs to (i) identify factors such as deficiencies in basic communication, research, academic subject matter (such as science, mathematics, etc.), or other skills which may prevent or discourage Indians from enrolling in health professions schools or undertaking the post-secondary education or training required to qualify them to enroll, and (ii) provide counseling and technical assistance to Indians to assist them in undertaking the necessary education, training or other activities to overcome such factors.

(e) Proposed projects to publicize existing kinds of financial aid available to Indians enrolled in health professions schools or to Indians undertaking training necessary to qualify them to enroll in such schools may include, but are not limited to, the following activities:

(1) Collecting information on available sources of financial aid and disseminating such information to Indian students, Indians, recruited under programs assisted by grants under this subdivision and to Indian tribes, tribal organizations, urban Indian organizations, Indian health organizations and other interested groups and communities throughout the United States;

(2) Providing information on available sources of financial aid which can be utilized by programs and counselors assisting Indians to obtain financial aid.

(f) Proposed projects for establishment of other programs which will enhance or facilitate enrollment of Indians in health professions schools and the subsequent pursuit and completion by them of courses of study in such schools may include, but are not limited to, the following activities:

(1) Compilation and dissemination of information on—

(i) Health professions education or training programs and the requirements for enrollment in such programs; and

(ii) Post-secondary education or training curricula and programs designed to qualify persons for enrollment in health professions schools;

(2) Developing and coordinating career orientation programs in local schools (including high schools) and colleges and universites;

(3) Developing programs to enable Indians to gain exposure to the health professions such as arranging for (i) visits to health care facilities and programs and meetings or seminars with health professionals, (ii) part-time summer or rotating employment in

health care facilities, programs, or offices of health professionals, (iii) volunteer programs, or (iv) other means of providing such exposure;

(4) Developing programs which relate tribal culture and tradition, including native medicine, to careers in the health professions; and

(5) Developing programs to make Indians aware of projected health manpower needs, expected employment opportunities in the health professions, and other factors in order to orient and motivate Indians to pursue careers in the health professions.

[42 FR 59646, Nov. 18, 1977, as amended at 50 FR 1855, Jan. 14, 1985; 81 FR 3011, Jan. 20, 2016; 89 FR 80069, Oct. 2, 2024]

§ 136.313 Evaluation and grant awards.

(a) Within the limits of funds available for such purpose, the Secretary, acting through the Service, may award health professions recruitment grants to those eligible applicants whose proposed projects will in his judgment best promote the purposes of section 102 of the Act, taking into consideration:

(1) The potential effectiveness of the proposed project in carrying out such purposes;

(2) The capability of the applicant to successfully conduct the project;

(3) The accessibility of the applicant to target Indian communities or tribes, including evidence of past or potential cooperation between the applicant and such communities or tribes;

(4) The relationship of project objectives to known or anticipated Indian health manpower deficiencies;

(5) The soundness of the fiscal plan for assuring effective utilization of grant funds;

(6) The completeness of the application.

(b) Preference shall be given to applicants in the following order or priority: (1) Indian tribes, (2) tribal organizations, (3) urban Indian organizations and other Indian health organizations, and (4) public and other nonprofit profit private health or educational entities.

(c) The Notice of Grant Awards specifies how long the Secretary intends to support the project period without requiring the project to re-compete for funds. This period, called the project period, will usually be for one to two years. The total project period comprises the original project period and any extension. Generally the grant will be for a one year budget period, any subsequent award will also be a one year budget period. A grantee must submit a separate application for each subsequent year. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, awards require a determination by the Secretary that funding is in the best interest of the Federal Government.

(d) Neither the approval of any application nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

[42 FR 59646, Nov. 18, 1977, as amended at 50 FR 1855, Jan. 14, 1985]

§ 136.314 Use of funds.

A grantee shall only spend funds it receives under this subpart according to the approved application and budget, the regulations of this subpart, the terms and conditions of the award, and the applicable cost principles prescribed in 2 CFR parts 200 and 300, subpart E.

[50 FR 1855, Jan. 14, 1985, as amended at 81 FR 3011, Jan. 20, 2016; 89 FR 80069, Oct. 2, 2024]

§ 136.315 Publication of list of grantees and projects.

The Secretary acting through the Service shall publish annually in the FEDERAL REGISTER a list of organizations receiving grants under this subdivision including for each grantee:

(a) The organization's name and address;

(b) The amount of the grant;

(c) A summary of the project's purposes and its geographic location.

§ 136.316 Other HHS regulations that apply.

Several other regulations apply to grants under this subdivision. These include but are not limited to:

2 CFR parts 200 and 300—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
42 CFR part 50, subpart D, Public Health Service grant appeals procedure
42 CFR part 16, Procedures of the Departmental Grant Appeals Board
45 CFR part 84, Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR part 86, Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR part 91, Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

[50 FR 1855, Jan. 14, 1985, as amended at 81 FR 3011, Jan. 20, 2016; 89 FR 80069, Oct. 2, 2024]

SUBDIVISION J–3—HEALTH PROFESSIONS PREPARATORY SCHOLARSHIP PROGRAM FOR INDIANS

§ 136.320 Preparatory scholarship grants.

Scholarship grants may be awarded under this subdivision and section 103 of the act for the period (not to exceed two academic years) necessary to complete a recipient's compensatory preprofessional education to enable the recipient to qualify for enrollment or re-enrollment in a health professions school. Examples of individuals eligible for such grants are the individual who:

(a) Has completed high school equivalency and needs compensatory preprofessional education to enroll in a health professions school;

(b) Has a baccalaureate degree and needs compensatory preprofessional education to qualify for enrollment in a health professions school; or

(c) Has been enrolled in a health professions school but is no longer so enrolled and needs preprofessional education to qualify for readmission to a health professions school.

§ 136.321 Eligibility.

To be eligible for a preparatory scholarship grant under this subdivision an applicant must:

(a) Be an Indian;

(b) Have successfully completed high school education or high school equivalency;

(c) Have demonstrated to the satisfaction of the Secretary the desire and capability to successfully complete courses of study in a health professions school;

(d) Be accepted for enrollment in or be enrolled in any compensatory preprofessional education course or curriculum meeting the criteria in § 136.320 of this subdivision; and

(e) Be a citizen of the United States.

[42 FR 59646, Nov. 18, 1977. Redesignated and amended at 67 FR 35342, May 17, 2002]

§ 136.322 Application and selection.

(a) An application for a preparatory scholarship grant under this subdivision shall be submitted in such form and at such time as the Secretary acting through the Service may prescribe.[1] However, an application must indicate:

(1) The health profession which the applicant wishes to enter, and

(2) Whether the applicant intends to provide health services to Indians upon completion of health professions education or training by serving as described in § 136.332 or otherwise as indicated on the application.

(b) Within the limits of funds available for the purpose, the Secretary, acting through the Service, shall make scholarship grant awards for a period not to exceed two academic years of an individual's compensatory preprofessional education to eligible applicants taking into consideration:

(1) Academic performance;

(2) Work experience;

(3) Faculty recommendations;

(4) Stated reasons for asking for the scholarship; and

[1] Applications and instructions may be obtained from the appropriate Indian Health Service Area or Program Office.

(5) The relative needs of the Service and Indian health organizations for persons in specific health professions.

[42 FR 59646, Nov. 18, 1977, as amended at 49 FR 7381, Feb. 29, 1984. Redesignated and amended at 67 FR 35342, May 17, 2002]]

§ 136.323 Scholarship and tuition.

(a) Scholarship grant awards under this subdivision shall consist of:

(1) A stipend of $400 per month adjusted in accordance with paragraph (c) of this section; and

(2) An amount determined by the Secretary for transportation, tuition, fees, books, laboratory expenses, and other necessary educational expenses.

(b) The portion of the scholarship for the costs of tuition and fees as indicated in the grant award will be paid directly to the school upon receipt of an invoice from the school. The stipend and remainder of the scholarship grant award will be paid monthly to the grantee under the conditions specified in the grant award.

(c) The amount of the monthly stipend specified in paragraph (a)(1) of this section shall be adjusted by the Secretary for each academic year ending in a fiscal year beginning after September 30, 1978, by an amount (rounded down to the next lowest multiple of $1) equal to the amount of such stipend multiplied by the overall percentage (as set forth in the report transmitted to the Congress under section 5305 of title 5, United States Code) of the adjustment in the rates of pay under the General Schedule made effective in the fiscal year in which such academic year ends.

[42 FR 59646, Nov. 18, 1977, as amended at 49 FR 7381, Feb. 29, 1984]

§ 136.324 Availability of list of recipients.

The Indian Health Service will provide to any persons requesting it a list of the recipients of scholarship grants under this subdivision, including the school attended and tribal affiliation of each recipient.

[49 FR 7381, Feb. 29, 1984]

SUBDIVISION J–4—INDIAN HEALTH SCHOLARSHIP PROGRAM

§ 136.330 Indian health scholarships.

Indian Health Scholarships will be awarded by the Secretary pursuant to 338A through 339G of the Public Health Service Act, and such implementing regulations as may be promulgated by the Secretary except as set out in this subdivision for the purpose of providing scholarships to Indian and other students at health professions schools in order to obtain health professionals to serve Indians.

[42 FR 59646, Nov. 18, 1977, as amended at 50 FR 1855, Jan. 14, 1985]

§ 136.331 Selection.

(a) The Secretary, acting through the Service, shall determine the individuals who receive Indian Health Scholarships.

(b) Priority shall be given to applicants who are Indians.

§ 136.332 Service obligation.

The service obligation provided in section 338G(b)(2) of the Public Health Service Act shall be met by the recipient of an Indian Health Scholarship by service in:

(a) The Indian Health Service.

(b) An urban Indian organization assisted under Subdivision J–6.

(c) In private practice of his or her profession if, the practice (1) is situated in a health manpower shortage area, designated under section 332 of the Public Health Service Act and (2) addresses the health care needs of a substantial number of Indians as determined by the Secretary in accordance with guidelines of the Service.

[42 FR 59646, Nov. 18, 1977, as amended at 50 FR 1855, Jan. 14, 1985]

§ 136.333 Distribution of scholarships.

The Secretary, acting through the Service, shall determine the distribution of Indian Health Scholarships among the health professions based upon the relative needs of Indians for additional service in specific health professions. In making that determination the needs of the Service will be given priority consideration. The following factors will also be considered:

(a) The professional goals of recipients of scholarships under section 103 of the Indian Health Care Improvement Act; and

(b) The professional areas of study of Indian applicants.

§ 136.334 Publication of a list of recipients.

The Secretary, acting through the Service, will publish annually in the FEDERAL REGISTER a list of recipients of Indian Health Scholarships, including the name of each recipient, tribal affiliation if applicable, and school.

SUBDIVISION J–5—CONTINUING EDUCATION ALLOWANCES

§ 136.340 Provision of continuing education allowances.

In order to encourage physicians, dentists and other health professionals to join or continue in the Service and to provide their services in the rural and remote areas where a significant portion of the Indian people reside, the Secretary, acting through the Service, may provide allowances to health professionals, employed in the Service in order to enable them to leave their duty stations for not to exceed 480 hours of professional consultation and refresher training courses in any one year.

SUBDIVISION J–6—CONTRACTS WITH URBAN INDIAN ORGANIZATIONS

§ 136.350 Contracts with Urban Indian organizations.

(a) The Secretary, acting through the Service, to the extent that funds are available for the purpose, shall contract with urban Indian organizations selected under § 36.351 of this subdivision to carry out the following activities in the urban centers where such organizations are situated:

(1) Determine the population of urban Indians which are or could be recipients of health referral or care services;

(2) Identify all public and private health service resources within the urban center in which the organization is situated which are or may be available to urban Indians;

(3) Assist such resources in providing service to such urban Indians;

(4) Assist such urban Indians in becoming familiar with and utilizing such resources;

(5) Provide basic health education to such urban Indians;

(6) Establish and implement manpower training programs to accomplish the referral and education tasks set forth in paragraphs (a)(3) through (5) of this section;

(7) Identify gaps between unmet health needs of urban Indians and the resources available to meet such needs;

(8) Make recommendations to the Secretary and Federal, State, local, and other resource agencies on methods of improving health service programs to meet the needs of urban Indians; and

(9) Prove or contract for health care services to urban Indians where local health delivery resources are not available, not accessible, or not acceptable to the urban Indians to be served.

(b) Contracts with urban Indian organizations pursuant to this title shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and need not conform to the provisions of the Act of August 24, 1935 as amended, (The Miller Act, 40 U.S.C. 270a *et seq.* which is concerned with bonding requirements).

(c) Payments under contracts may be made in advance or by way of reimbursement and in such installments and on such conditions as the Secretary deems necessary to carry out the purposes of title V of the Act.

(d) Notwithstanding any provision of law to the contrary, the Secretary may, at the request or consent of an urban Indian organization, revise or amend any contract made by him with such organization pursuant to this subdivision as necessary to carry out the purposes of title V of this Act: Provided, however, that whenever an urban Indian organization requests retrocession of the Secretary for any such contract, retrocession shall become effective upon a date specified by the Secretary not more than one hundred and twenty days from the date of the request by the organization or at such later date as may be mutually agreed

to by the Secretary and the organization.

(e) In connection with any contract made pursuant to this subdivision, the Secretary may permit an urban Indian organization to utilize, in carrying out such contract, existing facilities owned by the Federal Government within his jurisdiction under such terms and conditions as may be agreed upon for their use and maintenance.

§ 136.351 Application and selection.

(a) Proposals for contracts under this subdivision shall be submitted in such form and manner and at such time as the Secretary acting through the Service may prescribe.

(b) The Secretary, acting through the Service shall select urban Indian organizations with which to contract under this subdivision whose proposals will in his judgment best promote the purposes of title V of the Act taking into consideration the following factors:

(1) The extent of the unmet health care needs of the urban Indians in the urban center involved determined on the basis of the latest available statistics on disease incidence and prevalence, life expectancy, infant mortality, dental needs, housing conditions, family income, unemployment statistics, etc.

(2) The urban Indian population which is to receive assistance in the following order of priority:

(i) 9,000 or more;

(ii) 4,500 to 9,000;

(iii) 3,000 to 4,500;

(iv) 1,000 to 3,000;

(v) Under 1,000.

(3) The relative accessibility which the urban Indian population to be served has to health care services, in the urban center. Factors to be considered in determining relative accessibility include:

(i) Cultural barriers;

(ii) Discrimination against Indians;

(iii) Inability to pay for health care;

(iv) Lack of facilities which provide free care to indigent persons;

(v) Lack of state or local health programs;

(vi) Technical barriers created by State and local health agencies;

(vii) Availability of transportation to health care services;

(viii) Distance between Indian residences and the nearest health care facility.

(4) The extent to which required activities under §136.350(a) of this subdivision would duplicate any previous or current public or private health services projects in the urban center funded by another source. Factors to be considered in determining duplication include:

(i) Urban Indian utilization of existing health services funded by other sources;

(ii) Urban Indian utilization of existing health services delivered by an urban Indian organization funded by other sources.

(5) The appropriateness and likely effectiveness of the activities required in §136.350(a) of this subdivision in the urban center involved.

(6) The capability of the applicant urban Indian organization to perform satisfactorily the activities required in §136.350(a) of this subdivision and to contract with the Secretary.

(7) The extent of existing or likely future participation in the activities required in §136.350(a) of this subdivision by appropriate health and health related Federal, State, local, and other resource agencies.

(8) Whether the city has an existing urban Indian health program.

(9) The applicant organization's record of performance, if any, in regard to any of the activities required in §136.350(a) of this subdivision.

(10) Letters demonstrating local support for the applicant organization from both the Indian and non-Indian communities in the urban center involved.

[42 FR 59646, Nov. 18, 1977; 42 FR 61861, Dec. 7, 1977. Redesignated and amended at 67 FR 35342, May 17, 2002]

§ 136.352 Fair and uniform provision of services.

Contracts with urban Indian organizations under this subdivision shall incorporate the following clause:

The Contractor agrees, consistent with medical need, and the efficient provision of medical services to make no discriminatory distinctions against Indian patients or beneficiaries of this contract which are inconsistent with

the fair and uniform provision of services.

§ 136.353 Reports and records.

For each fiscal year during which an urban Indian organization receives or expends funds pursuant to a contract under this title, such organization shall submit to the Secretary a report including information gathered pursuant to § 136.350(a) (7) and (8) of this subdivision, information on activities conducted by the organization pursuant to the contract, an accounting of the amounts and purposes for which Federal funds were expended, and such other information as the Secretary may request. The reports and records of the urban Indian organization with respect to such contract shall be subject to audit by the Secretary and the Comptroller General of the United States.

[42 FR 59646, Nov. 18, 1977. Redesignated and amended at 67 FR 35342, May 17, 2002]

SUBDIVISION J–7—LEASES WITH INDIAN TRIBES

§ 136.360 Leases with Indian tribes.

(a) Any land or facilities otherwise authorized to be acquired, constructed, or leased to carry out the purposes of the Act may be leased or subleased from Indian tribes for periods not in excess of twenty years.

(b) Leases entered into pursuant to paragraph (a) shall be subject to the requirements of section 322 of the Economy Act (40 U.S.C. 278a), which limits expenditures for rent and alterations, improvements and repairs on leased buildings.

SUBDIVISION J–8—HEALTH PROFESSIONS PREGRADUATE SCHOLARSHIP PROGRAM FOR INDIANS

SOURCE: 49 FR 7381, Feb. 29, 1984, unless otherwise noted. Redesignated at 67 FR 35342, May 17, 2002.

§ 136.370 Pregraduate scholarship grants.

(a) Pregraduate scholarship grants may be awarded under this subdivision and section 103 of the Act for the period (not to exceed four academic years) necessary to complete a recipient's pregraduate education leading to a baccalaureate degree in a premedicine, preoptometry, predentistry, preosteopathy, preveterinary medicine, or prepodiatry curriculum or equivalent.

(b) Students enrolled in accredited health professional or allied health professional programs which lead to eligibility for licensure, certification, registration or other types of credentials required for the practice of a health or allied health profession are ineligible for scholarships under this subdivision. Examples of health professions and allied health professions that will not be considered for funding include but are not limited to: nursing, audiology, medical technology, dental hygiene, dental technicians, engineering, radiologic technology, dietitian, nutritionist, social work, health education, physical therapy, occupational therapy and pharmacy. Scholarships for students in these programs are provided under Subdivision J–4 of this subpart.

§ 136.371 Eligibility.

To be eligible for a pregraduate scholarship grant under this subdivison an applicant must:

(a) Be an Indian;

(b) Have successfully completed high school education or high school equivalency;

(c) Have demonstrated to the satisfaction of the Secretary the desire and capability to successfully complete courses of study in a pregraduate education program meeting the criteria in § 136.370;

(d) Be accepted for enrollment in or be enrolled in any accredited pregraduate education curriculum meeting the criteria in § 136.370 of this subdivision; and

(e) Be a citizen of the United States.

[49 FR 7381, Feb. 29, 1984. Redesignated and amended at 67 FR 35342, May 17, 2002]

§ 136.372 Application and selection.

(a) An application for a pregraduate scholarship grant under this subdivision shall be submitted in such form and at such time as the Secretary may prescribe. However, an application must indicate:

(1) The pregraduate program in which the applicant is or wishes to enter, and

(2) Whether the applicant intends to provide health services to Indians upon completion of health professions education or training by serving as described in §136.332 or otherwise as indicated on the application.

(b) Within the limits of available funds, the Director, IHS, shall make pregraduate scholarship grant awards for a period not to exceed four academic years of an individual's pregraduate education to eligible applicants taking into consideration:

(1) Academic performance;

(2) Work experience;

(3) Faculty or employer recommendation;

(4) Stated reasons for asking for the scholarship; and

(5) The relative needs of the IHS and Indian health organizations for persons in specific health professions.

(Approved by the Office of Management and Budget under control number 0915–0080)

[49 FR 7381, Feb. 29, 1984. Redesignated and amended at 67 FR 35342, May 17, 2002]

§ 136.373 Scholarship and tuition.

(a) Scholarship grant awards under this subdivision shall consist of:

(1) A stipend of $400 per month adjusted in accordance with paragraph (c) of this section; and

(2) An amount determined by the Secretary for transportation, tuition, fees, books, laboratory expenses and other necessary educational expenses.

(b) The portion of the scholarship for the costs of tuition and fees as indicated in the grant award will be paid directly to the school upon receipt of an invoice from the school. The stipend and remainder of the scholarship grant award will be paid monthly to the grantee under the conditions specified in the grant award.

(c) The amount of the monthly stipend specified in paragraph (a)(1) of this section shall be adjusted by the Secretary for each academic year ending in a fiscal year beginning after September 30, 1978, by an amount (rounded down to the next lowest multiple of $1) equal to the amount of such stipend multiplied by the overall percentage (as set forth in the report transmitted to the Congress under section 5305 of title 5, United States Code) of the adjustment in the rates of pay under the General Schedule made effective in the fiscal year in which such academic year ends.

§ 136.374 Availability of list of recipients.

The IHS will provide to any person requesting it a list of the recipients of scholarship grants under this subdivision, including the school attended and tribal affiliation of each recipient.

Subpart K—Indian Child Protection and Family Violence Prevention

SOURCE: 67 FR 59467, Sept. 23, 2002, unless otherwise noted.

§ 136.401 Purpose.

(a) The purpose of the regulations in this subpart is to establish minimum standards for Federal employees working in the Indian Health Service (IHS), including standards of character to ensure that individuals having regular contact with or control over Indian children have not been convicted of certain types of crimes as mandated by section 408 of the Indian Child Protection and Family Violence Prevention Act (the ''Act''), Public Law (Pub. L.) 101–630, 104 Stat. 4544, 25 U.S.C. 3201–3211, as amended by section 814 of the Native American Laws Technical Corrections Act of 2000. In order to implement these minimum standards of character, these regulations also address:

(1) The efficiency standards to ensure that individuals are qualified for the positions they hold or seek, as mandated by Section 408 of the Act.

(2) Fitness standards to ensure child care service employees are fit to have responsibility for the safety and well-being of children, as mandated by Section 231 of the Crime Control Act of 1990, Pub. L. 101–647, 42 U.S.C. 13041.

(3) Suitability standards to ensure that individuals have not acted in a manner that places others at risk or raised questions about their trustworthiness, as mandated by 5 CFR part 731.

(b) The Act requires that Tribes or Tribal organizations who receive funds under the Indian Self-Determination

and Education Assistance Act (ISDEA), Pub. L. 93–638, employ individuals in positions involving regular contact with or control over Indian children only if the individuals meet standards of character no less stringent than those prescribed under these regulations. Thus, the minimum standards of character as defined in these regulations will become the basis for Tribes or Tribal organizations to use when developing their own minimum standards of character that cannot be less stringent than as prescribed herein.

§ 136.402 Policy.

In enacting the Indian Child Protection and Family Violence Prevention Act, (the ''Act'') the Congress recognized there is no resource more vital to the continued existence and integrity of Indian Tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of, or are eligible for membership in, an Indian Tribe. The minimum standards of character as prescribed by the regulations in this subpart are intended to ensure that Indian children are protected.

§ 136.403 Definitions.

Crimes against Persons means a crime that has as an element the use, attempted use, or threatened use of physical force or other abuse of a person and includes, but is not limited to, homicide; assault; kidnapping; false imprisonment; reckless endangerment; robbery; rape; sexual assault, molestation, exploitation, contact, or prostitution; and other sexual offenses. In determining whether a crime falls within this category, the applicable Federal, State, or Tribal law under which the individual was convicted or pleaded guilty or nolo contendere shall be controlling.

Crimes of violence means a crime that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other crime that is a felony and that, by its nature, involves substantial risk that physical force against the person or property of another may be used in the course of committing the crime. In determining whether a crime falls within this category, reference may be made to the applicable Federal, State, or Tribal law under which the individual was convicted or pleaded guilty or nolo contendere.

Indian means any individual who is a member of an Indian Tribe, as defined below.

Indian child means any unmarried person under the age of eighteen who is either a member of an Indian Tribe or eligible for membership in an Indian Tribe and is the biological child of a member of an Indian Tribe.

Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Individuals means persons with duties and responsibilities that involve regular contact with or control over Indian children and includes but is not limited to the following:

(a) Persons in the competitive or excepted service (including temporary employment), the Commissioned Corps, or the Senior Executive Service in the IHS;

(b) Persons who perform service for or under the supervision of the IHS while being permanently assigned to another IHS office or to another organization, such as a Federal agency, State, or Tribe;

(c) Persons who volunteer to perform services in IHS facilities;

(d) Persons who contract with the IHS to perform services in IHS facilities.

Must or shall indicates a mandatory or imperative act or requirement.

Offenses against children means any felonious or misdemeanor crime under Federal, State, or Tribal law committed against a victim that has not attained the age of eighteen years. In determining whether a crime falls within this category, the applicable Federal, State, or Tribal law under which the individual was convicted or

pleaded guilty or nolo contendere shall be controlling.

Regular contact with or control over an Indian child means responsibility for an Indian child(ren) within the scope of the individual's duties and responsibilities or contact with an Indian child(ren) on a recurring and foreseeable basis.

Tribal Organization as defined in the ISDEA, means the recognized governing body of any Indian Tribe or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

§ 136.404 What does the Indian Child Protection and Family Violence Prevention Act require of the IHS and Indian Tribes or Tribal organizations receiving funds under the ISDEA?

(a) The IHS must compile a list of all authorized positions with duties and responsibilities that involve regular contact with or control over Indian children; investigate the character of each individual who is employed or is being considered for employment in such a position; and prescribe minimum standards of character that each individual must meet to be appointed or employed in such positions.

(b) All Indian Tribes or Tribal organizations receiving funds under the authority of the ISDEA must identify those positions that permit regular contact with or control over Indian children; conduct an investigation of the character of each individual who is employed or is being considered for employment in a position that involves regular contact with or control over Indian children; and employ only individuals who meet standards of character that are no less stringent than those prescribed by regulations in this subpart.

§ 136.405 What are the minimum standards of character for individuals placed in, or applying for, a position that involves regular contact with or control over Indian children?

The minimum standards of character shall mean a benchmark of moral, ethical, and emotional strengths established by character traits and past conduct to ensure that the individual is competent to complete his/her job without harm to Indian children. In order to protect Indian children, the IHS has established minimum standards of character requiring completion of a satisfactory background investigation that ensures that no individuals who have been found guilty of, or entered a plea of nolo contendere or guilty to, any felonious offense or any of two or more misdemeanor offenses under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact, or prostitution; crimes against persons; or offenses committed against children, are placed in positions involving regular contact with or control over Indian children.

§ 136.406 Under what circumstances will the minimum standards of character be considered to be met?

The minimum standards of character shall be considered met only after the individual has been the subject of a satisfactory background investigation. The background investigation shall include a review of:

(a) The individual's trustworthiness, through inquiries with the individual's references and places of employment and education;

(b) A criminal history background check, which includes a fingerprint check through the Criminal Justice Information Services Division of the Federal Bureau of Investigation (FBI), under procedures approved by the FBI, and inquiries to State and Tribal law enforcement agencies for the previous five years of residence listed on the individual's application; and

(c) A determination as to whether the individual has been found guilty of or entered a plea of nolo contendere or guilty to any felonious offense or any of two or more misdemeanor offenses

under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact, or prostitution; crimes against persons; or offenses committed against children.

§ 136.407 Under what circumstances should a conviction, or plea of nolo contendere or guilty to, be considered if there has been a pardon, expungement, set aside, or other court order of the conviction or plea?

All convictions or pleas of nolo contendere or guilty to should be considered in making a determination unless a pardon, expungement, set aside or other court order reaches the plea of guilty, plea of nolo contendere, or the finding of guilt.

§ 136.408 What are other factors, in addition to the minimum standards of character, that may be considered in determining placement of an individual in a position that involves regular contact with or control over Indian children?

(a) All Federal employees are subject to suitability criteria contained in 5 CFR part 731 as a condition of employment.

(b) Section 231 of the Crime Control Act of 1990, Pub. L. 101–647, 42 U.S.C. 13041, provides that an individual may be disqualified from consideration or continuing employment if such individual has been convicted of a sex crime, an offense involving a child victim or a drug felony, or any other crime if such conviction bears on an individual's fitness to have responsibility for the safety and well-being of children.

(c) Tribes or Tribal organizations may but are not required to apply additional criteria in determining whether an individual is suitable for a position with duties and responsibilities that involve regular contact with or control over Indian children. Any additional suitability criteria established by Tribes or Tribal organizations beyond the minimum standards of character described in §136.405 and §136.406 would be determined by each individual Tribe or Tribal organization in accordance with its own personnel policies and procedures.

§ 136.409 What positions require a background investigation and determination of eligibility for employment or retention?

(a) All positions that allow an individual regular contact with or control over Indian children are subject to a background investigation and determination of eligibility for employment. The IHS has compiled a list of positions within the agency in which the duties and responsibilities could involve regular contact with or control over Indian children. The list will be periodically updated and made available at all IHS Personnel Offices upon request. Positions should be reviewed on a case-by-case basis to determine whether the individual in that position has regular contact with or control over Indian children.

(b) Tribes and Tribal organizations may use the list compiled by the IHS or develop their own procedures to determine within their program those positions that involve regular contact with or control over Indian children.

§ 136.410 Who conducts the background investigation and prepares determinations of eligibility for employment?

(a) The IHS must use the Office of Personnel Management (OPM) to conduct background investigations for Federal employees. The IHS must designate qualified security personnel to adjudicate the results of background investigations.

(b) Indian Tribes and Tribal organizations may conduct their own background investigations, contract with private firms, or may request that a Federal or State agency conduct investigations. (FBI criminal history record information, however, may only be received or evaluated by governmental agencies, including Tribes or Tribal organizations as defined in these regulations at §136.403, and may not be disseminated to private entities.)

§ 136.411 Are the requirements for IHS adjudication different from the requirements for Indian Tribes and Tribal organizations?

Yes, in conducting background investigations and adjudicating eligibility for employment in Tribal positions

that allow regular contact with or control over Indian children, Indian Tribes or Tribal organizations may, but are not required to, adopt portions of the rules in this subpart that are specifically applicable to employment with the IHS.

§ 136.412 What questions must the IHS ask as part of the background investigation?

(a) Applications for employment with the IHS must include the following questions:

(1) Has the individual been arrested or charged with a crime involving a child? If yes, the individual must provide the date, explanation of the violation, disposition of the arrest or charge, place of occurrence, and the name and address of the police department or court involved.

(2) Has the individual ever been found guilty of, or entered a plea of nolo contendere or guilty to, any felonious or misdemeanor offense, under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact, or prostitution; crimes against persons; or offenses committed against children? If yes, the individual must provide an explanation of the violation, place of occurrence, date and disposition of the court proceeding, and the name and address of the police department or court involved.

(b) The IHS must require that the individual sign, under penalty of perjury, a statement verifying the truth of all information provided in the employment application and acknowledging that knowingly falsifying or concealing a material fact is a felony that may result in fines up to $10,000 or five years imprisonment, or both.

(c) The IHS must inform the individual that a criminal history record check is a condition of employment and require the individual to consent in writing to a criminal history record check.

§ 136.413 What protections must the IHS and Tribes or Tribal organizations provide to individuals undergoing a background investigation?

(a) The IHS must comply with all policies, procedures, criteria, and guidance contained in other appropriate guidelines, such as the OPM policies, procedures, criteria, and guidance. Questions asked in §136.412 will be added as an addendum to item #16 of the OPM Optional Form 306, ''Declaration for Federal Employment.'' The information is collected as part of the OPM Optional Form 306 and is safeguarded in accordance with Privacy Act provisions.

(b) Indian Tribes and Tribal organizations must comply with the privacy requirements of the Federal, State, or other Tribal agency providing the background investigations. Indian Tribes and Tribal organizations may establish their own procedures that safeguard information derived from background investigations.

§ 136.414 How does the IHS determine eligibility for placement or retention of individuals in positions involving regular contact with Indian children?

(a) Adjudication is the process IHS uses to determine eligibility for placement or retention of individuals in positions involving regular contact with Indian children. The adjudication process protects the interests of the employer and the right of applicants and employees. Adjudication requires uniform evaluation to ensure fair and consistent judgment.

(b) Each case is judged on its own merits. All available information, both favorable and unfavorable, should be considered and assessed in terms of accuracy, completeness, relevance, seriousness, overall significance, and how similar cases have been handled in the past.

(c) The adjudicating official who conducts the adjudication must first have been the subject of a favorable background investigation.

(d) Each adjudicating official must be thoroughly familiar with all laws, regulations, and criteria involved in making a determination for eligibility.

(e) The adjudicating official must review the background investigation to determine the character, reputation, and trustworthiness of the individual. At a minimum, the background investigation must:

(1) Review each security investigation form and employment application and compare the information provided.

(2) Review the results of written record searches requested from local law enforcement agencies, former employers, former supervisors, employment references, and schools.

(3) Review the results of the fingerprint charts maintained by the FBI or other law enforcement information maintained by other agencies.

(4) Review any other information obtained through a background investigation, including the results of searches by State human services agencies, the OPM National Agency Check and Inquiries, the OPM Security/Suitability Investigations Index, and the Defense Clearance and Investigations Index.

(5) Determine whether the individual has been found guilty of, or entered a plea of nolo contendere or guilty to, any felonious offense, or any of two or more misdemeanor offenses under Federal, State, or Tribal law, involving crimes of violence; sexual assault, molestation, exploitation, contact, or prostitution; crimes against persons; or offenses committed against children.

(f) After an opportunity has been afforded the individual to respond, pursuant to §136.415, and it is adjudicated that the individual has been found guilty of or entered a plea of nolo contendere or guilty to an enumerated offense under paragraph (e)(5) of this section, that individual shall not be placed or retained in a position involving regular contact with or control over Indian children.

(g) For individuals who have been determined to be ineligible for employment in positions having regular contact with or control over Indian children, the IHS may use Federal adjudicative standards to certify that an individual is suitable for employment in a position, if available, that does not involve regular contact with or control over Indian children. The adjudicating official must determine that the individual's prior conduct will not interfere with the performance of duties and will not create a potential risk to the safety and well-being of any Indian children after consideration of the following factors:

(1) The nature and seriousness of the conduct in question.

(2) The recency and circumstances surrounding the conduct in question.

(3) The age of the individual at the time of the incident.

(4) Societal conditions that may have contributed to the nature of the conduct.

(5) The probability that the individual will continue the type of behavior in question.

(6) The individual's commitment to rehabilitation and a change in the behavior in question.

(7) The degree of public trust and the possibility the public would be placed at risk if the individual is appointed to the position.

§ 136.415 What rights does an individual have during this process?

(a) The individual must be provided an opportunity to explain, deny, or refute unfavorable and incorrect information gathered in an investigation, before the adjudication is final. He/she should receive a written summary of all derogatory information and be informed of the process for explaining, denying, or refuting unfavorable information.

(b) The adjudicating officials must not release the actual background investigative report to an individual. However, they may issue a written summary of the derogatory information.

(c) The individual who is the subject of a background investigation may request, to the extent permissible by law, a copy of the reports from the originating (Federal, State, or other Tribal) agency and challenge the accuracy and completeness of any information maintained by that agency.

(d) The results of an investigation cannot be used for any purpose other than to determine eligibility for employment in a position that involves regular contact with or control over Indian children.

(e) Investigative reports contain information of a highly personal nature and must be maintained confidentially and secured in locked files. Investigative reports must be seen only by those officials who, in performing their official duties, need to know the information contained in the report.

§ 136.416 When should the IHS deny employment or dismiss an employee?

The IHS must deny employment to an individual or dismiss an employee, when the duties and responsibilities of the position the individual person would hold or holds involve regular contact with or control over Indian children, and it has been adjudicated, pursuant to §136.414 and §136.415, that the individual has been found guilty of, or entered a plea of guilty or nolo contendere to, any felonious offense, or any of two or more misdemeanor offenses, under Federal, State or Tribal law involving a crime of violence; sexual assault, molestation, exploitation, contact, or prostitution; crimes against persons; or offenses committed against children. The IHS has the discretion to place such an individual in a position, if available, that does not involve regular contact with or control over Indian children, if a determination has been made that such placement would not put Indian children at risk and the individual would be able to perform the duties and responsibilities of this position.

§ 136.417 May the IHS hire individuals pending completion of a background investigation?

Pursuant to section 231 of the Crime Control Act of 1990, Pub. L. 101–647, 42 U.S.C. 13041, as amended by Pub. L. 102–190, the IHS may hire provisionally individuals as defined in these regulations, prior to the completion of a background investigation if, at all times prior to receipt of the background investigation during which children are in the care of the individual, the individual is within the sight and under the supervision of a staff person and a satisfactory background investigation has been completed on that staff person.

§ 136.418 What should the IHS do if an individual has been charged with an offense but the charge is pending or no disposition has been made by a court?

(a) The IHS may deny the applicant employment until the charge has been resolved.

(b) The IHS may deny the employee any on-the-job contact with children until the charge is resolved.

(c) The IHS may detail or reassign the employee to other duties that do not involve regular contact with children.

(d) The IHS may place the employee on indefinite suspension, in accordance with statutory and regulatory requirements, until the court has disposed of the charge.

Subpart L—Indian Catastrophic Health Emergency Fund

SOURCE: 89 FR 70533, Aug. 30, 2024, unless otherwise noted.

§ 136.501 Definitions.

Alternate resources means health care resources other than those of the Indian Health Service (IHS or Service). Such resources include health care providers and institutions, and health care programs for the payment of health services including but not limited to programs under title XVIII or XIX of the Social Security Act (*i.e.*, Medicare, Medicaid), State or local health care programs, and private insurance.

Catastrophic Health Emergency Fund (CHEF) means the fund established by Congress to reimburse extraordinary medical expenses incurred for catastrophic illnesses and disasters paid by a purchased/referred care (PRC) program of the IHS, whether such program is carried out by the IHS or an Indian Tribe or Tribal Organization under the Indian Self-Determination and Education Assistance Act (ISDEAA).

Catastrophic illness refers to a medical condition that is costly by virtue of the intensity and/or duration of its treatment. Examples of conditions that frequently require multiple hospital stays and extensive treatment are cancer, burns, premature births, cardiac disease, end-stage renal disease, strokes, trauma-related cases such as automobile accidents and gunshot wounds, and some mental disorders. The CHEF is intended to insulate the IHS and Tribal PRC operations from financial disruption caused by the intensity of expenses incurred as a result of high cost illnesses and/or disasters.

Disaster means a situation that poses a significant level of threat to life or health or causes loss of life or health stemming from events such as tornadoes, earthquakes, floods, catastrophic accidents, epidemics, fires, and explosions. The CHEF is intended to insulate the IHS and Tribal PRC operations from financial disruption caused by the intensity of expenses incurred as a result of high cost illnesses and/or disasters.

Episode of care means the period of consecutive days for a discrete health condition during which reasonable and necessary medical services related to the condition occur.

Purchased/referred care means any health service that is—

(1) Delivered based on a referral by, or at the expense of, an Indian health program; and

(2) Provided by a public or private medical provider or hospital which is not a provider or hospital of the Indian health program.

Service Unit means an administrative entity of the Service or a Tribal Health Program through which services are provided, directly or by contract, to eligible Indians within a defined geographic area.

Threshold cost means the annual designated amount above which incurred medical costs will be considered for the CHEF reimbursement after a review of the authorized expenses and diagnosis.

§ 136.502 Purpose of this subpart.

The CHEF is authorized by section 202 of the Indian Health Care Improvement Act (IHCIA) [25 U.S.C. 1621a]. The CHEF is administered by the Secretary, Department of Health and Human Services (HHS) (''the Secretary'') acting through the Headquarters of IHS, solely for the purpose of meeting extraordinary medical costs associated with treatment of victims of disasters or catastrophic illnesses who are within the responsibility of the Service. This subpart:

(a) Establishes definitions of terms governing the CHEF, including definitions of disasters and catastrophic illnesses for which the cost of treatment provided under contract would qualify for payment from the CHEF;

(b) Establishes a threshold level for reimbursement for the cost of treatment;

(c) Establishes procedures for reimbursement of the portion of the costs incurred by Service Units that exceeds such threshold costs, including procedures for when the exigencies of the medical circumstances warrant treatment prior to the authorization of such treatment by the Service; and

(d) Establishes procedures for reimbursements pending the outcome or payment by alternate resources.

§ 136.503 Threshold cost.

A Service Unit shall not be eligible for reimbursement from the CHEF until its cost of treating any victim of a catastrophic illness or disaster for an episode of care has reached a certain threshold cost.

(a) The threshold cost shall be established at the level of $19,000 for fiscal year 2024.

(b) The threshold cost in subsequent years shall be calculated from the threshold cost of the previous year, increased by the percentage increase in the medical care expenditure category of the Consumer Price Index for all urban consumers (United States city average) for the 12-month period ending with December of the previous year. The revised threshold costs shall be published yearly in the FEDERAL REGISTER.

§ 136.504 Reimbursement procedure.

Service Units whose scope of work and funding include the purchase of medical services from private or public vendors under PRC are eligible to participate. The CHEF payments shall be based only on valid PRC expenditures, including expenditures for exigent medical circumstances without prior PRC authorization. Reimbursement from the CHEF will not be made if applicable PRC requirements are not followed.

(a) *Claim submission.* Requests for reimbursement from the CHEF must be submitted to the appropriate IHS Area Office. Area PRC programs will review requests for reimbursement to ensure

compliance with PRC requirements, including but not limited to: patient eligibility, medical necessity, notification requirements for emergent and non-emergent care, medical priorities, allowable expenditures, and eligibility for alternate resources. Following this review, Area PRC programs may provide Service Units an opportunity to submit missing information or to resubmit documents that are indecipherable. Area PRC programs will then forward all requests to the Division of Contract Care, along with any recommendations or observations from the Area PRC program regarding compliance with PRC or other CHEF requirements. The Division of Contract Care will adjudicate the claim based upon an independent review of the claim documentation, but it may consider any recommendations or observations from the Area PRC program.

(b) *Content of claims.* All claims submitted for reimbursement may be submitted electronically utilizing the secure IHS system(s) established for this purpose or may be submitted in paper form but must include:

(1) A fully completed Catastrophic Health Emergency Fund Reimbursement Request Form.

(2) A statement of the provider's charges on a form that complies with the format required for the submission of claims under title XVIII of the Social Security Act. For example, charges may be printed on forms such as the Centers for Medicare & Medicaid Services (CMS) 1500, UB–04 (formerly CMS–1450), American Dental Association (ADA) dental claim form, or National Council for Prescription Drug Program (NCPDP) universal claim forms. The forms submitted for review must include specific appropriate diagnostic and procedure codes.

(3) An explanation of benefits or statement of payment identifying how much was paid to the provider by the Service Unit for the catastrophic illness or disaster. Payments to the patient or any other entity are ineligible for the CHEF reimbursement.

(4) The Division of Contract Care may request additional medical documentation describing the medical treatment or service provided, including but not limited to discharge summaries and/or medical progress notes. Cases may be submitted for 50% reimbursement of eligible expenses pending discharge summaries. Medical documentation must be received to close the CHEF case.

(c) *Limitation of funds and reimbursement procedure.* Because of the limitations of funds, full reimbursement cannot be guaranteed on all requests and will be based on the availability of funds at the time the IHS processes the claim. To the extent funds are available, the CHEF funds may not be used to cover the cost of services or treatment for which the funds were not approved. Unused funds, including but not limited to, funds unused due to overestimates, alternate resources, and cancellations must be returned to the CHEF.

§ 136.505 Reimbursable services.

The costs of catastrophic illnesses and disasters for distinct episodes of care are eligible for reimbursement from the CHEF in accordance with the medical priorities of the Service. Only services that are related to a distinct episode of care will be eligible for reimbursement. Some of the services that may qualify for reimbursement from the fund are:

(a) Emergency treatment.

(b) Emergent and acute inpatient hospitalization.

(c) Ambulance services; air and ground (including patient escort travel costs).

(d) Attending and consultant physician.

(e) Functionally required reconstructive surgery.

(f) Prostheses and other related items.

(g) Reasonable rehabilitative therapy exclusive of custodial care not to exceed 30 days after discharge.

(h) Skilled nursing care when the patient is discharged from the acute process to a skilled nursing facility.

§ 136.506 Alternate resources.

(a) Expenses paid by alternate resources are not eligible for payment by PRC or reimbursement by the CHEF. No payment shall be made from the

CHEF to any Service Unit to the extent that the provider of services is eligible to receive payment for the treatment from any other Federal, State, local, or private source of reimbursement for which the patient is eligible. A patient shall be considered eligible for such resources and no payment shall be made from the CHEF if:

(1) The patient is eligible for alternate resources; or

(2) The patient would be eligible for alternate resources if he or she were to apply for them; or

(3) The patient would be eligible for alternate resources under Federal, State, or local law or regulation but for the patient's eligibility for PRC, or other health services, from the Indian Health Service or Indian Health Service funded programs.

(b) Patients are not required to expend personal resources for health services to meet alternate resource eligibility, nor are they required to sell valuables or property to become eligible for alternate resources.

(c) When a PRC program pays primary to (*i.e.*, before) a Tribal self-insurance plan, this will not impact whether the PRC program's expenditures are eligible for reimbursement from the CHEF, as long as the Service Unit clearly demonstrates that the PRC program was responsible and did in fact assume that responsibility by making the payments at issue in the CHEF request.

(d) The determination of whether a resource constitutes an alternate resource for the purpose of the CHEF reimbursement shall be made by the Headquarters of the Indian Health Service, irrespective of whether the resource was determined to be an alternate resource at the time of PRC payment.

§ 136.507 Program integrity.

All the CHEF records and documents will be subject to review by the respective IHS Area Office and by IHS Headquarters. Internal audits and administrative reviews may be conducted as necessary to ensure compliance with the regulations in this part and the CHEF policies.

§ 136.508 Recovery of reimbursement funds.

In the event a Service Unit has been reimbursed from the CHEF for an episode of care and that same episode of care becomes eligible for and is paid by any Federal, State, local, or private source (including third party insurance) the Service Unit shall return all the CHEF funds received for that episode of care to the CHEF at the IHS Headquarters. These recovered CHEF funds will be used to reimburse other valid CHEF requests.

§ 136.509 Reconsideration and appeals.

(a) Any Service Unit to whom payment from the CHEF is denied will be notified of the denial in writing together with a statement of the reason for the denial within 130 business days from receipt.

(b) If a decision on the CHEF case is not made by the CHEF Program Manager within 180 calendar days from receipt, the Service Unit that submitted the claim may choose to appeal it as a deemed denial.

(c) In order to seek review of a denial decision or deemed denial, the Service Unit must follow the procedures set forth in paragraphs (c)(1) and (2) of this section.

(1) Within 40 business days from the receipt of the denial provided in paragraph (a) of this section, the Service Unit may submit a request in writing for reconsideration of the original denial to the Division of Contract Care. The request for reconsideration must include, as applicable, corrections to the original claim submission necessary to overcome the denial; or a statement and supporting documentation establishing that the original denial was in error. If no additional information is submitted the original denial will stand. The Service Unit may also request a telephone conference with the Division of Contract Care, to further explain the materials submitted, which shall be scheduled within 40 business days from receipt of the request for review. A decision by the Division of Contract Care shall be made within 130 business days of the request for review. The Division of Contract Care Director, or designee, shall review

the application *de novo* with no deference to the original decision maker or to the applicant.

(2) If the original decision is affirmed on reconsideration, the Service Unit will be notified in writing and advised that an appeal may be taken to the Director, Indian Health Service, within 40 business days of receipt of the denial. The appeal shall be in writing and shall set forth the grounds supporting the appeal. The Service Unit may also request a telephone conference through the Division of Contract Care, which shall be scheduled with the Director or a representative designated by the Director, to further explain the grounds supporting the appeal. A decision by the Director shall be made within 180 calendar days of the request for reconsideration. The decision of the Director, Indian Health Service or designee, shall constitute the final administrative action.

§ 136.510 Severability.

If any provision of this subpart is held to be invalid or unenforceable by its terms, as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed to continue to give the maximum effect to the provision permitted by law, including as applied to those not similarly situated or to dissimilar circumstances. However, if such holding is that the provision of this subpart is invalid and unenforceable in all circumstances, the provision shall be severable from the remainder of this subpart and shall not affect the remainder thereof.

PART 136a—INDIAN HEALTH

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SOURCE: 64 FR 58318, 58319, Oct. 28, 1999, unless otherwise noted. Redesignated at 67 FR 35342, May 17, 2002.

Subpart A—Purpose

§ 136a.1 Purpose of the regulations.

These regulations establish general principles and program requirements for carrying out the Indian health program.

[46 FR 40692, Aug. 11, 1981. Redesignated at 52 FR 35048, Sept. 16, 1987]

§ 136a.2 Administrative instructions.

The Service periodically issues administrative instructions to its officers and employees which are primarily found in the Indian Health Service Manual and the Area Office and Program Office supplements. These instructions are operating procedures to