

struck out at beginning “There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.”

#### **§ 1621d. Other authority for provision of services**

##### **(a) Definitions**

In this section:

##### **(1) Assisted living service**

The term “assisted living service” means any service provided by an assisted living facility (as defined in section 1715w(b) of title 12), except that such an assisted living facility—

(A) shall not be required to obtain a license; but

(B) shall meet all applicable standards for licensure.

##### **(2) Home- and community-based service**

The term “home- and community-based service” means 1 or more of the services specified in paragraphs (1) through (9) of section 1396t(a) of title 42 (whether provided by the Service or by an Indian tribe or tribal organization pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.))<sup>1</sup> that are or will be provided in accordance with applicable standards.

##### **(3) Hospice care**

The term “hospice care” means—

(A) the items and services specified in subparagraphs (A) through (H) of section 1395x(dd)(1) of title 42; and

(B) such other services as an Indian tribe or tribal organization determines are necessary and appropriate to provide in furtherance of that care.

##### **(4) Long-term care services**

The term “long-term care services” has the meaning given the term “qualified long-term care services” in section 7702B(c) of title 26.

##### **(b) Funding authorized**

The Secretary, acting through the Service, Indian tribes, and tribal organizations, may provide funding under this chapter to meet the objectives set forth in section 1602 of this title through health care-related services and programs not otherwise described in this chapter for the following services:

- (1) Hospice care.
- (2) Assisted living services.
- (3) Long-term care services.
- (4) Home- and community-based services.

##### **(c) Eligibility**

The following individuals shall be eligible to receive long-term care services under this section:

- (1) Individuals who are unable to perform a certain number of activities of daily living without assistance.
- (2) Individuals with a mental impairment, such as dementia, Alzheimer’s disease, or another disabling mental illness, who may be able to perform activities of daily living under supervision.
- (3) Such other individuals as an applicable tribal health program determines to be appropriate.

##### **(d) Authorization of convenient care services**

The Secretary, acting through the Service, Indian tribes, and tribal organizations, may also provide funding under this chapter to meet the objectives set forth in section 1602 of this title for convenient care services programs pursuant to section 1637(c)(2)(A) of this title.

(Pub. L. 94-437, title II, §205, as added Pub. L. 102-573, title II, §206(a), Oct. 29, 1992, 106 Stat. 4548; amended Pub. L. 111-148, title X, §10221(a), Mar. 23, 2010, 124 Stat. 935.)

#### **Editorial Notes**

##### **REFERENCES IN TEXT**

The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), referred to in subsec. (a)(2), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, which was classified principally to subchapter II (§450 et seq.) of chapter 14 of this title prior to editorial reclassification as chapter 46 (§5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

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

##### **CODIFICATION**

Amendment by Pub. L. 111-148 is based on section 124(a)(1) of title I of S. 1790, One Hundred Eleventh Congress, as reported by the Committee on Indian Affairs of the Senate in Dec. 2009, which was enacted into law by section 10221(a) of Pub. L. 111-148.

##### **PRIOR PROVISIONS**

A prior section 1621d, Pub. L. 94-437, title II, §205, as added Pub. L. 100-713, title II, §203(c), Nov. 23, 1988, 102 Stat. 4807, related to Native Hawaiian health promotion and disease prevention, prior to repeal by Pub. L. 100-579, §14, formerly §10, Oct. 31, 1988, 102 Stat. 2923; Pub. L. 100-690, title II, §2310, Nov. 18, 1988, 102 Stat. 4229; renumbered §14, Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948. See section 11701 et seq. of Title 42, The Public Health and Welfare.

##### **AMENDMENTS**

2010—Pub. L. 111-148 amended section generally. Prior to amendment, section related to hospice care feasibility study.

#### **§ 1621e. Reimbursement from certain third parties of costs of health services**

##### **(a) Right of recovery**

Except as provided in subsection (f), the United States, an Indian tribe, or tribal organization shall have the right to recover from an insurance company, health maintenance organization, employee benefit plan, third-party tortfeasor, or any other responsible or liable third party (including a political subdivision or local governmental entity of a State) the reasonable charges billed by the Secretary, an Indian tribe, or tribal organization in providing health services through the Service, an Indian tribe, or tribal organization, or, if higher, the highest amount the third party would pay for care and services furnished by providers other than governmental entities, to any individual to

<sup>1</sup> See References in Text note below.

the same extent that such individual, or any nongovernmental provider of such services, would be eligible to receive damages, reimbursement, or indemnification for such charges or expenses if—

(1) such services had been provided by a nongovernmental provider; and

(2) such individual had been required to pay such charges or expenses and did pay such charges or expenses.

**(b) Limitations on recoveries from States**

Subsection (a) shall provide a right of recovery against any State, only if the injury, illness, or disability for which health services were provided is covered under—

(1) workers' compensation laws; or

(2) a no-fault automobile accident insurance plan or program.

**(c) Nonapplicability of other laws**

No law of any State, or of any political subdivision of a State and no provision of any contract, insurance or health maintenance organization policy, employee benefit plan, self-insurance plan, managed care plan, or other health care plan or program entered into or renewed after November 23, 1988, shall prevent or hinder the right of recovery of the United States, an Indian tribe, or tribal organization under subsection (a).

**(d) No effect on private rights of action**

No action taken by the United States, an Indian tribe, or tribal organization to enforce the right of recovery provided under this section shall operate to deny to the injured person the recovery for that portion of the person's damage not covered hereunder.

**(e) Enforcement**

**(1) In general**

The United States, an Indian tribe, or tribal organization may enforce the right of recovery provided under subsection (a) by—

(A) intervening or joining in any civil action or proceeding brought—

(i) by the individual for whom health services were provided by the Secretary, an Indian tribe, or tribal organization; or

(ii) by any representative or heirs of such individual, or

(B) instituting a separate civil action, including a civil action for injunctive relief and other relief and including, with respect to a political subdivision or local governmental entity of a State, such an action against an official thereof.

**(2) Notice**

All reasonable efforts shall be made to provide notice of action instituted under paragraph (1)(B) to the individual to whom health services were provided, either before or during the pendency of such action.

**(3) Recovery from tortfeasors**

**(A) In general**

In any case in which an Indian tribe or tribal organization that is authorized or required under a compact or contract issued pursuant to the Indian Self-Determination

and Education Assistance Act (25 U.S.C. 450 et seq.)<sup>1</sup> to furnish or pay for health services to a person who is injured or suffers a disease on or after March 23, 2010, under circumstances that establish grounds for a claim of liability against the tortfeasor with respect to the injury or disease, the Indian tribe or tribal organization shall have a right to recover from the tortfeasor (or an insurer of the tortfeasor) the reasonable value of the health services so furnished, paid for, or to be paid for, in accordance with the Federal Medical Care Recovery Act (42 U.S.C. 2651 et seq.), to the same extent and under the same circumstances as the United States may recover under that Act.

**(B) Treatment**

The right of an Indian tribe or tribal organization to recover under subparagraph (A) shall be independent of the rights of the injured or diseased person served by the Indian tribe or tribal organization.

**(f) Limitation**

Absent specific written authorization by the governing body of an Indian tribe for the period of such authorization (which may not be for a period of more than 1 year and which may be revoked at any time upon written notice by the governing body to the Service), the United States shall not have a right of recovery under this section if the injury, illness, or disability for which health services were provided is covered under a self-insurance plan funded by an Indian tribe, tribal organization, or urban Indian organization. Where such authorization is provided, the Service may receive and expend such amounts for the provision of additional health services consistent with such authorization.

**(g) Costs and attorney's fees**

In any action brought to enforce the provisions of this section, a prevailing plaintiff shall be awarded its reasonable attorney's fees and costs of litigation.

**(h) Nonapplicability of claims filing requirements**

An insurance company, health maintenance organization, self-insurance plan, managed care plan, or other health care plan or program (under the Social Security Act [42 U.S.C. 301 et seq.] or otherwise) may not deny a claim for benefits submitted by the Service or by an Indian tribe or tribal organization based on the format in which the claim is submitted if such format 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].

**(i) Application to urban Indian organizations**

The previous provisions of this section shall apply to urban Indian organizations with respect to populations served by such Organizations<sup>1</sup> in the same manner they apply to Indian tribes and tribal organizations with respect to populations

<sup>1</sup> See References in Text note below.

<sup>1</sup> So in original. Probably should not be capitalized.

served by such Indian tribes and tribal organizations.

**(j) Statute of limitations**

The provisions of section 2415 of title 28 shall apply to all actions commenced under this section, and the references therein to the United States are deemed to include Indian tribes, tribal organizations, and urban Indian organizations.

**(k) Savings**

Nothing in this section shall be construed to limit any right of recovery available to the United States, an Indian tribe, or tribal organization under the provisions of any applicable, Federal, State, or tribal law, including medical lien laws.

(Pub. L. 94-437, title II, §206, as added Pub. L. 100-713, title II, §204, Nov. 23, 1988, 102 Stat. 4811; amended Pub. L. 102-573, title II, §209, Oct. 29, 1992, 106 Stat. 4551; Pub. L. 111-148, title X, §10221(a), Mar. 23, 2010, 124 Stat. 935.)

**Editorial Notes**

**REFERENCES IN TEXT**

The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), referred to in subsec. (e)(3)(A), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, which was classified principally to subchapter II (§450 et seq.) of chapter 14 of this title prior to editorial reclassification as chapter 46 (§5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Federal Medical Care Recovery Act, referred to in subsec. (e)(3)(A), probably means Pub. L. 87-693, Sept. 25, 1962, 76 Stat. 593, which is classified generally to chapter 32 (§2651 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Tables.

The Social Security Act, referred to in subsec. (h), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

**CODIFICATION**

Amendment by Pub. L. 111-148 is based on section 125 of title I of S. 1790, One Hundred Eleventh Congress, as reported by the Committee on Indian Affairs of the Senate in Dec. 2009, which was enacted into law by section 10221(a) of Pub. L. 111-148.

**AMENDMENTS**

2010—Pub. L. 111-148 amended section generally. Prior to amendment, section related to right of recovery of costs of health services by the United States, an Indian tribe, or a tribal organization from certain third parties.

1992—Subsec. (a). Pub. L. 102-573, §209(b)(1), substituted “Except as provided in subsection (f) of this section, the” for “The”.

Pub. L. 102-573, §209(a)(1)–(3), inserted “, an Indian tribe, or a tribal organization” after “United States”, after “Service”, and after “Secretary”.

Subsec. (b). Pub. L. 102-573, §209(a)(4), struck out “, or any political subdivision of a State,” after “against any State”.

Subsecs. (c), (d). Pub. L. 102-573, §209(a)(1), inserted “, an Indian tribe, or a tribal organization” after “United States”.

Subsec. (e). Pub. L. 102-573, §209(a)(1), (3), inserted “, an Indian tribe, or a tribal organization” after “United States” in two places and after “Secretary”.

Subsec. (f). Pub. L. 102-573, §209(b)(2), added subsec. (f).

**§ 1621f. Crediting of reimbursements**

**(a) Use of amounts**

**(1) Retention by program**

Except as provided in sections 1621a(a)(2) and 1680c of this title, all reimbursements received or recovered under any of the programs described in paragraph (2), including under section 1680c of this title, by reason of the provision of health services by the Service, by an Indian tribe or tribal organization, or by an urban Indian organization, shall be credited to the Service, such Indian tribe or tribal organization, or such urban Indian organization, respectively, and may be used as provided in section 1641 of this title. In the case of such a service provided by or through a Service Unit, such amounts shall be credited to such unit and used for such purposes.

**(2) Programs covered**

The programs referred to in paragraph (1) are the following:

(A) Titles XVIII, XIX, and XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.].

(B) This chapter, including section 1680c of this title.

(C) Public Law 87-693 [42 U.S.C. 2651 et seq.].

(D) Any other provision of law.

**(b) No offset of amounts**

The Service may not offset or limit any amount obligated to any Service Unit or entity receiving funding from the Service because of the receipt of reimbursements under subsection (a).

(Pub. L. 94-437, title II, §207, as added Pub. L. 100-713, title II, §204, Nov. 23, 1988, 102 Stat. 4812; amended Pub. L. 102-573, title VII, §701(c)(1), Oct. 29, 1992, 106 Stat. 4572; Pub. L. 111-148, title X, §10221(a), Mar. 23, 2010, 124 Stat. 935.)

**Editorial Notes**

**REFERENCES IN TEXT**

The Social Security Act, referred to in subsec. (a)(2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XVIII, XIX, and XXI of the Act are classified generally to subchapters XVIII (§1395 et seq.), XIX (§1396 et seq.), and XXI (§1397aa et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

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

Public Law 87-693, referred to in subsec. (a)(2)(C), is Pub. L. 87-693, Sept. 25, 1962, 76 Stat. 593, popularly known as the Federal Medical Care Recovery Act, which is classified generally to chapter 32 (§2651 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Tables.