

Indian Health Care Improvement Act Made Permanent By Health Care Reform Legislation

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Included in the recently-passed Patient Protection and Affordable Care Act¹ signed into law by President Obama was the reauthorization of the Indian Health Care Improvement Act (IHCIA)² – considered to be the cornerstone legal authority for the provision of progressive health care services to American Indians and Alaska Natives (AI/AN).³ Viewed as a victory for individuals and tribes that have requested the legislation for the past ten years, the reauthorization of the IHCIA affirms the federal government's trust responsibility to provide health care to AI/ANs across the country.⁴

Background

During the 1890s, the federal government began to advocate the assimilation of Native Americans into mainstream American life.⁵ As part of that assimilation process, the government sought to increase the tribes' dependence on medicine practiced by physicians of the West and decreased reliance on Tribal practices. The Bureau of Indian Affairs oversaw congressional appropriations used for health care programs offered to American Indians. Since that time, the responsibility for their health care oversight has bounced around and currently is placed with the Indian Health Service (IHS), a division of the U.S. Department of Health and Human Services.

The IHS provides health care services to 1.9 million of the estimated 3.3 million nationwide AI/ANs belonging to 562 federally-recognized tribes in 35 states.⁶ The agency does this through a network of 63 health centers, 29 hospitals, and 28 health stations which are managed by 161 service units and 12 Area Offices.⁷ Health care services are delivered in three ways: (1) directly through IHS services; (2) through tribal medical services; or (3) by contract with non-IHS service providers.⁸

Better quality and increased health care services provided to AI/ANs has been met with some success in the last 30 years. Life expectancy among the Indian people has

¹ Patient Protection and Affordable Care Act, H.R. 3590, Pub. L. No. 111-148, 111th Cong. (2010).

² Indian Health Care Improvement Act, Pub. L. No. 94-437, 94th Cong. (Sept. 30, 1976).

³ See Nat'l Indian Health Bd., Press Release, *America Reaffirms Health Care for Indian Country*, (Mar. 21, 2010), <http://www.nihb.org/docs/03212010/PR-03.21.10%20FINAL.pdf>.

⁴ *Id.*

⁵ Gary D. Sandefur, *Federal Policy Toward Minorities, 1787-1980*, 10 FOCUS 21 (1987), available at <http://www.irp.wisc.edu/publications/focus/pdfs/foc102c.pdf>.

⁶ Indian Health Serv., *Indian Health Service Introduction*, http://www.ihs.gov/PublicInfo/PublicAffairs/Welcome_Info/IHSintro.asp (last accessed Apr. 3, 2010).

⁷ Indian Health Serv., *IHS Year 2010 Profile*, <http://info.ihs.gov/Profile2010.asp> (last accessed Apr. 3, 2010).

⁸ Indian Health Serv., *Quick Look*, <http://info.ihs.gov/QuickLook2010.asp> (last accessed Apr. 3, 2010). See also Holly T. Kuschell-Haworth, *Jumping Through Hoops: Traditional Healers And The Indian Health Care Improvement Act*, 4 DEPAUL J. OF HEALTH CARE L. 843 (Summer 1999).

increased by more than 9 years since 1973 while mortality rates have decreased for infant deaths, tuberculosis, pneumonia, influenza, homicide, suicide, and alcoholism.⁹ However, disparities for each of those categories still exist compared with the U.S. general population. Indian life expectancy is still nearly 5 years less than the average American while death rates for various illnesses and other causes are significantly higher across the board.¹⁰

Federal Legislation Governing AI/AN Health Care

The duty of the federal government to provide health services to Indian Tribes derives from a number of different sources, including negotiated treaties to ceded lands, settlements, agreements, and legislation.¹¹ The principal legislation authorizing federal funds for health services to American Indians is the Snyder Act of 1921.¹² That legislation authorized funds for “the relief of distress and conservation of health...[and]...for the employment of...physicians...for Indian Tribes throughout the United States.”¹³ Following the Snyder Act, Congress created a patchwork process for transferring the responsibility of overseeing health programs to tribal governments in 1975.

By enacting the Indian Self-Determination and Education Assistance Act of 1975,¹⁴ Congress sought to provide Indian Tribes with a greater role in governing their own health care and education programs. The 1975 Act contained two provisions: (1) the Indian Self-Determination Act, which established procedures by which Tribes could eventually administer their own education and social service programs, and (2) the Indian Education Assistance Act, which sought to increase parental involvement in Indian education.¹⁵ Since 1975 the Act has been amended several times. The following year, Congress passed a health care-specific bill designed to provide the quality and quantity of health care services necessary to elevate the health status of AI/ANs to the highest possible health status and to provide existing Indian health services with all resources necessary to effect that policy.

⁹ *Id.*

¹⁰ *Id.* For example, tuberculosis (500% higher), alcoholism (519% higher), diabetes (195% higher), unintentional injuries (149% higher), homicide (92% higher), and suicide (72% higher).

¹¹ Nat’l Indian Health Bd., *supra* note 3. See also Holly T. Kuschell-Haworth, *Jumping Through Hoops: Traditional Healers And The Indian Health Care Improvement Act*, 4 DEPAUL J. OF HEALTH CARE L. 843 (Summer 1999).

¹² Pub. L. No. 67-85, 42 Stat. 208 (Nov. 2, 1921), *codified at* 25 U.S.C. 1 *et seq.* (2001), *available at* http://www.ihs.gov/adminmngresources/legislativeaffairs/legislative_affairs_web_files/key_acts/snyder_act.pdf.

¹³ *Id.* See also Indian Health Serv., *Fact Sheet*, http://www.ihs.gov/PublicAffairs/Welcome_Info/ThisFacts.asp (last accessed Apr. 3, 2010).

¹⁴ Pub. L. No. 93-638, 88 Stat. 2203 (1975), *codified as* 25 U.S.C. §§ 450a-450n, and as amended in scattered sections of 25 U.S.C, 42 U.S.C, and 50 U.S.C.).

¹⁵ *Id.* See also GEORGE CASTILE, *TO SHOW HEART: NATIVE AMERICAN SELF-DETERMINATION AND FEDERAL INDIAN POLICY, 1960–1975* (Univ. of Ariz. Press, 1998); THOMAS CLARKIN, *FEDERAL INDIAN POLICY IN THE KENNEDY AND JOHNSON ADMINISTRATIONS, 1961–1969*, (Univ. of N.M. Press, 2001).

In 1976, Congress found that many IHS facilities were “inadequate, outdated, inefficient, and undermanned,” and enacted the Indian Health Care Improvement Act (IHCIA)¹⁶ to “implement the Federal responsibility for the care and education of the Indian people by improving the services and facilities of Federal Indian health programs and encouraging maximum participation” in those programs.¹⁷ Specific portions of the IHCIA contained language that would ensure that AI/ANs could obtain access to high-quality, comprehensive health care services when needed and also established procedures for the IHS to assist tribes in developing infrastructure to manage their health programs. Since 1976, the legislation has been amended numerous times,¹⁸ including substantive changes in 1992 which extended the act’s purpose of raising the health status of AI/ANs over a specified period of time to the level of the general U.S. population.¹⁹

During the late 1990s, the IHS worked closely with Indian Tribes and governments to draft amendments to IHCIA that would provide greater administrative capabilities to tribal health programs and increase quality of care given.²⁰ In 1999, a National Steering Committee was established to review those proposed recommendations and complete a final legislative draft. By late 1999, the Committee’s final proposal was in the hands of the Congressional leadership as well as the White House. However, nothing ever materialized.

The IHCIA expired in 2000, but was extended through 2001 in the belief that Congress would reauthorize it shortly thereafter. Yet, since 2001 Congress has only held hearings on various proposals but enacted no substantive changes to the IHCIA until the recently-passed health care reform legislation was passed.

Reauthorization of IHCIA

The version of the IHCIA signed into law on March 23, 2010, differs in several ways from the original 1976 version. It includes many major changes and improvements to effectuate the delivery of health care services to AI/ANs, including:

- Enhances the authority of the IHS Director, including the responsibility to facilitate advocacy and promote consultation on matters relating to Indian health within the Department of Health and Human Services.

¹⁶ Pub. L. No. 94-437, 90 Stat. 400, 94th Cong. (Sept. 30, 1976); *Ariz. Health Care Cost Containment Sys. v. McClellan*, 508 F.3d 1243, 1246 (9th Cir.2007).

¹⁷ *Id.*

¹⁸ Pub. L. No. 94-437, 90 Stat. 400, 94th Cong. (Sept. 30, 1976), as amended by Pub. L. No. 96-537 (Dec. 17, 1980), Pub. L. No. 100-579 (Oct. 31, 1988), Pub. L. No. 100-690 (Nov. 18, 1988), Pub. L. No. 100-713 (Nov. 23, 1988), Pub. L. No. 101-630 (Nov. 28, 1990), Pub. L. No. 102-573 (Oct. 29, 1992), Pub. L. No. 104-313 (Oct. 19, 1996), and Pub. L. No. 106-417 (Nov. 1, 2000). A copy of the marked-up legislation may be found at <http://www.ihs.gov/adminmngresources/ihcia/documents/ihcia.pdf>.

¹⁹ *Id.* See also Holly T. Kuschell-Haworth, *supra* note 8.

²⁰ Indian Health Serv., *Indian Health Care Improvement Act*, <http://info.ihs.gov/TreatiesLaws/Treaties3.pdf> (last accessed Apr. 3, 2010).

- Provides authorization for hospice, assisted living, long-term, and home- and community-based care.
- Extends the ability to recover costs from third parties to tribally operated facilities.
- Updates current law regarding collection of reimbursements from Medicare, Medicaid, and CHIP (Children’s Health Insurance Program) by Indian health facilities.
- Allows tribes and tribal organizations to purchase health benefits coverage for IHS beneficiaries.
- Authorizes IHS to enter into arrangements with the Departments of Veterans Affairs and Defense to share medical facilities and services.
- Allows a tribe or tribal organization carrying out a program under the Indian Self-Determination and Education Assistance Act and an urban Indian organization carrying out a program under Title V of IHCA to purchase coverage for its employees from the Federal Employees Health Benefits Program.
- Authorizes the establishment of a Community Health Representative program for urban Indian organizations to train and employ Indians to provide health care services.
- Directs the IHS to establish comprehensive behavioral health, prevention, and treatment programs for Indians.²¹

The inclusion of the IHCA in the reform legislation was hailed by the National Indian Health Board as a much-needed provision. “No one can deny the intense political climate that has been present in the debates regarding health care reform. However, there is one issue that has remained consistently agreed upon: Indian Country is in dire need of health care reform,” said Reno Franklin, Chairman of the National Indian Health Board.²² Adding to that sentiment, President Obama remarked after he signed the reform legislation that he “believes it is unacceptable that Native American communities still face gaping health care disparities.”²³

²¹ Pub. L. No. 94-437, 90 Stat. 400, 94th Cong. (Sept. 30, 1976); Patient Protection and Affordable Care Act, H.R. 3590, Pub. L. No. 111-148, 111th Cong. (2010) at Sec. 10221; U.S. Dep’t of Health & Human Servs., Press Release, *Indian Health Care Improvement Act Made Permanent*, (Mar. 26, 2010), <http://www.hhs.gov/news/press/2010pres/03/20100326a.html>.

²² Nat’l Indian Health Bd., Press Release, *America Reaffirms Health Care for Indian Country*, Mar. 21, 2010, <http://www.nihb.org/docs/03212010/PR-03.21.10%20FINAL.pdf>.

²³ The White House, Office of the Press Sec’y, *Statement by the President on the Reauthorization of the Indian Health Care Improvement Act*, Mar. 23, 2010, <http://www.whitehouse.gov/the-press-office/statement-president-reauthorization-indian-health-care-improvement-act>; U.S. Dep’t of Health &

Conclusion

Federal funding for the IHCIA has contributed billions of dollars to improve the health status of Indian people, yet significant health care disparities still exist compared with the U.S. general population. Hopefully, the inclusion of the IHCIA in the reform legislation will be a significant step towards reducing those disparities.

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