



February 20, 2009

**INDIAN-SPECIFIC SOCIAL SECURITY ACT AMENDMENTS  
ENACTED INTO LAW THROUGH  
CHIP REAUTHORIZATION AND ECONOMIC STIMULUS MEASURES**

This memorandum describes several landmark provisions which benefit Indian individuals eligible for Medicaid and the Children's Health Insurance Program (CHIP) and Indian health programs which serve Indian patients enrolled in those programs. Most of these provisions were longstanding goals of the effort to reauthorize the Indian Health Care Improvement Act. Where applicable, the location of a provision in S. 1200, the IHCA bill as passed by the Senate in 2008, is noted.

**A. Provisions enacted in American Recovery and Reinvestment Act (Pub. L. 111 -5)**

*NOTE: The following provisions become effective July 1, 2009.*

• **Protection of Indians from premiums and cost sharing under Medicaid and CHIP**

This provision prohibits the assessment of any premium, and any form of cost sharing (such as a co-payment) on an Indian enrolled in Medicaid or CHIP who is served by an IHS, tribal or urban Indian organization (I/T/U) program. The prohibition extends to such an Indian served through a Contract Health Services program as well.

Indian advocates sought such cost sharing protection after the 2003 enactment of Medicaid amendments which gave the states greater flexibility to charge premiums and impose co-pay requirements to many Medicaid beneficiaries. The downturn in the economy makes it more likely that many states will use this authority to charge premiums and co-pays. Tribes sought this protection so that I/T/U programs do not have to use scarce health program and CHS dollars to cover premium and co-pay costs for their Indian patients. The prohibitions in this provision apply only to Indians served by I/T/U programs. [S. 1200: Title II, §204(a)]

• **Exemption of certain Indian property from consideration for Medicaid and CHIP eligibility**

To be eligible for Medicaid and CHIP, an individual's resources must be below certain levels set out in the law. The purpose of this provision is to exempt from the term "resources" property connected to the political relationship between Indian tribes and the Federal government (such as reservation property and natural resources), and property with unique Indian significance (such as property with religious, spiritual or cultural value). This exemption is needed to remove a barrier to enrollment of Indian people in Medicaid and CHIP. It is modeled on the exemption of the same type of property from the Medicaid estate recovery provision described next. [S. 1200: Title II, §204(b)]

- **Continuation of protection of certain Indian property from Medicaid Estate Recovery**

The Medicaid law requires States to seek to recover costs of care provided to a deceased Medicaid beneficiary from the individual's estate. Several years ago, the Centers for Medicare & Medicaid Services (CMS) used its administrative authority to exempt certain Indian property from the estate recovery requirement in order to remove a disincentive for eligible Indians to enroll in Medicaid. The types of Indian property exempted from estate recovery are currently only described in the Medicaid Manual, an administrative document. The new provision would elevate the Manual entry to the status of law. This Medicaid Manual provision served as the model for the types of Indian property exempt from consideration as "resources" for Medicaid and CHIP eligibility in the provision described above. [S. 1200: Title II, §204(c)]

- **Tribal consultation on Medicaid and CHIP**

*TTAG.* This provision requires CMS to maintain the Tribal Technical Advisory Group (TTAG) chartered by the agency in 2003 to receive policy guidance from tribal representatives on issues involving participation by individual Indians and Indian health programs in Medicare, Medicaid and CHIP. It directs the HHS Secretary to add to the TTAG a representative from IHS and an urban Indian organization representative.

*State consultation.* This provision also requires that any State in which an IHS, tribal or urban Indian organization program is located must maintain an on-going process to seek the advice of representatives from those programs on Medicaid and CHIP matters that are likely to have a direct effect on the I/T/U programs. The requirement extends to proposed Medicaid amendments, waiver requests and demonstration proposals, and is to occur before the State's proposal is sent to CMS. Tribes have long sought mandatory State consultation on Medicaid matters, but CMS had declined to impose such a requirement because it was not required by law. This new provision overcomes that agency argument by putting the consultation requirement in the law. [S. 1200: Title II, §206]

- **Medicaid Managed Care protections for Indians and Indian health care programs**

This provision contains a number of protections, long sought by tribal advocates, which are intended to overcome some negative impacts on Indian health programs that occur when States use managed care approaches for their Medicaid programs. Key features of the provision include: (i) an option for an Indian enrolled in Medicaid managed care to select his/her Indian health care provider as a primary care provider; (ii) a requirement that a managed care entity agrees to pay Indian health providers for care provided to managed care enrollees who are Indian at a rate negotiated with the Indian health provider or at a rate the entity would pay another provider, regardless of whether the Indian health provider is in the managed care entity's provider network; and (iii) establishment of special rules for an Indian health provider that wishes to be an Indian managed care entity under a State Medicaid Plan. [S. 1200: Title II, §208]

**B. Provisions enacted in CHIP reauthorization (Pub. L. 111-3)**

- **Tribal enrollment documents accepted as proof of U.S. citizenship for Medicaid and CHIP**

This provision directs acceptance of a document issued by a Federally-recognized Indian tribe evidencing membership or affiliation with such tribe as proof that the individual is a U.S. citizen

for purposes of eligibility for Medicaid and CHIP. Such a document would be given the same status as a U.S. passport for demonstrating U.S. citizenship.

With regard to tribes located in a state with an international border (Canada or Mexico) which admit non-U.S. citizens as members, the HHS Secretary is directed, after consultation with affected tribes, to issue regulations regarding presentation of additional forms of documentation (if any) which the Secretary determines to be necessary for members of those tribes. Any such other documentation may be tribal documents. Until any such regulations are issued, however, an enrollment document issued by a tribe in a border state will be accepted as satisfactory proof of U.S. citizenship.

Tribal advocates sought acceptance of tribal enrollment documents for proof of U.S. citizenship after Congress, in 2003, amended the Medicaid law to require Medicaid applicants to produce proof of U.S. citizenship. That law specifically described the types of acceptable documents, and the Department of HHS subsequently issued detailed implementing regulations. Despite strong advocacy from Indian representatives including the CMS Tribal Technical Advisory Group (TTAG), HHS declined to designate enrollment documents from all Federally-recognized tribes as satisfactory proof; only a very few tribes' documents were listed as acceptable, but none were given the same status as a U.S. passport. These policies made it difficult for some tribal members (e.g., persons without state-issued birth certificates) to produce acceptable documentation proving they were U.S. citizens; thus, enrollment of low-income Indians in Medicaid was jeopardized. The enacted provision would correct the situation in the way tribes have sought. [S. 1200: Title II, §203(d)]

- **Increased outreach and enrollment of Indians in Medicaid and CHIP**

This provision encourages States to provide for Medicaid and CHIP enrollment on/near reservations, including stationing eligibility workers there, and to enter into agreements with IHS, tribes, tribal organizations and urban Indian organizations to provide enrollment and translation services. [S. 1200: Title II, §202(a)]

The provision also allows states to pursue enrollment of Medicaid and CHIP-eligible children by exempting the costs of outreach to Indian children from the 10% cap the law places on federal funds that can be used for CHIP outreach. [S. 1200: Title II, §202(b)]

- **Funding for CHIP outreach**

The new law appropriates \$100 million over five years for CHIP and Medicaid outreach to eligible children. *Ten percent* of these funds are set aside for grants to IHS, tribal and urban Indian programs for outreach to Indian children. (It is expected that the IHS grants office will administer the grants awarded from the Indian set-aside funds.) Another ten percent of the funds are set aside for the HHS Secretary to conduct a national outreach campaign which shall include development of materials appropriate for Native American communities. It would make sense for grants or contracts to be awarded to tribes and Indian organizations to develop these materials.