

National Indian Health Board



Media Alert

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Department of Health and Human Services Offers Partial Solution Definition of Indian

On Wednesday, June 26, the Secretary of the Department of Health and Human Services (HHS) issued a final rule that provides a hardship waiver that will prevent American Indians/Alaska Natives (AI/ANs) from receiving a tax penalty if they fail to retain minimum essential coverage under the Affordable Care Act (ACA or Act). As currently written, the Act exempts only a portion of AI/ANs, those who are members of federally recognized tribes, though many others already receive services from Indian health care providers and would be negatively impacted if the Definition is not streamlined.

The National Indian Health Board (NIHB) applauds HHS's decision to move forward with this waiver and appreciates the Secretary responding to the comments of the Tribes and Tribal advocates to address definition of Indian issue. Yet, there are many other benefits included in the ACA specific to AI/ANs that need to be addressed in order for all AI/ANs to be afforded the opportunities provided for in the Act. Two of the Indian-specific protections (special monthly enrollment periodsⁱ and additional cost-sharing protectionsⁱⁱ) are available only to AI/ANs who are enrolled in the individual market through an Exchange. This hardship waiver does not address special protections and benefits for AI/ANs that will be affected if the Definition of Indian in the act is not streamlined. Because it's not a legislative fix and it is the secretary's exemption waiver, a future Administration could reverse the policy.

NIHB has been working with Congress and the Administration to seek a permanent fix to this issue to ensure that AI/ANs receive all the benefits they are entitled to under the Act and we see this step as progress in this effort. NIHB will continue to advance its legislative strategy with its other partner organizations and continue to push to achieve a complete fix legislatively through Congress.

Please contact Caitrin McCarron with NIHB for more information, cmccarron@nihb.org; (202) 507-4085. Check the NIHB website for regular updates and outreach guidance at www.nihb.org

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ⁱ The special monthly enrollment periods are described in 45 C.F.R. § 155.420(d)(8). An AI/AN may enroll in a health plan or change from one health plan to another one time per month.

ⁱⁱ See ACA § 1402(d)(1) and (2). The additional cost-sharing protections are described in 45 C.F.R. § 155.300(a) and (b)). Under ACA § 1402(d)(1), the cost-sharing protections encompass a waiver of all cost-sharing for an AI/AN individual whose household income is not more than 300 percent of the Federal poverty level. Under ACA § 1402(d)(2), there is no cost-sharing for an AI/AN individual of any income level when furnished an item or service directly or through referral by an Indian Health Care Provider. "Indian Health Care Providers" are comprised of the Indian Health Service, Tribes and tribal



organizations, and urban Indian organizations. Collectively, these entities are also sometimes referred to as “I/T/U”. The Indian Health Service means the agency of that name within the U.S. Department of Health and Human Services (“HHS”) established by IHCA § 601 (25 USC §1661). The terms “Indian tribe,” “tribal organization,” and “UIO” have the meaning given those terms in IHCA § 4 (25 USC §1603). The issuer of a health plan shall not reduce the payment to an Indian Health Care Provider by the amount of any cost-sharing that would be due from an AI/AN but for this provision. The Secretary of HHS is to pay to the health plan the amount necessary to reflect the increase in actuarial value of the plan required by reason of this provision.

About the National Indian Health Board

The National Health Board (NIHB) is a 501(c) 3 not for profit, charitable organization serving and advocating for all federally recognized Tribes to advance the health care services, public health and health status of American Indian and Alaska Native Peoples. Whether Tribes operate their own health care delivery systems through contracting and compacting or receive health care directly from the Indian Health Services (IHS), NIHB is their advocate. NIHB provides health care advocacy services, facilitates Tribal engagement in consultation and delivers timely information and other essential services to all Tribal Governments. NIHB also conducts research; provides policy analysis; assists with program development, management and assessment; public health; supports national and regional meeting planning; and provides training and technical assistance in a variety of Tribal health areas.