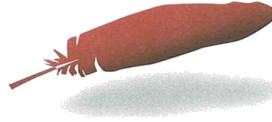


National Indian Health Board



Definition of Indian in the Affordable Care Act FAQ's

The “Definitions of Indian” in the Affordable Care Act (ACA) are not consistent with the definitions already used by the Indian Health Service (IHS), Medicaid and the Children’s Health Insurance Plan (CHIP) for services provided to American Indians and Alaska Natives (AI/ANs). The ACA definitions, which currently require that a person is a member of a federally recognized Tribe or an Alaska Native Claims Settlement Act (ANCSA) corporation, are narrower than those used by IHS, Medicaid and CHIP, thereby leaving out a sizeable population of AI/ANs that the ACA was intended to benefit and protect.

Unless the definition of Indian in the ACA is changed, many AI/ANs will not be eligible for the special protections and benefits intended for them in the law, and, in the future, could force many AI/ANs who are already receiving health care through IHS to pay a tax penalty for not maintaining minimum essential coverage.

What benefits are at stake?

The ACA includes three major special protections and benefits for AI/ANs which would be denied to many AI/AN people under the current ACA definitions of Indian, these are:

- (1) An exemption for AI/ANs from the tax penalty for not maintaining minimum essential coverage (because they already have access to IHS services);
- (2) Cost-sharing provisions where the Department of Health and Human Services (HHS) will pay deductibles and co-pays for AI/ANs if they purchase a plan on the Exchanges; and
- (3) Allowing AI/ANs to enroll in health insurance exchange plans on a month-to-month basis rather than only during special enrollment periods.

Is this issue about Tribal enrollment or who can use IHS services?

No. Nothing in the proposed amendment will have any effect on who is eligible for Tribal enrollment. That will continue to be solely up to Tribes. Nor will it affect IHS eligibility rules, which will not be changed. This issue is about ensuring that AI/AN people are eligible for the benefits and protections intended for them in the new health reform law.

Why do we need a fix?

Without a fix many AI/AN people will be denied the monthly enrollment and cost-sharing benefits intended for them in the ACA and, in the future, they could be subjected to tax penalties under the ACA. On June 26, HHS announced a hardship exemption waiver that exempts AI/ANs who are not members of federally recognized from the tax penalty. Although this is a positive step, it only temporarily fixes 1 of 3 issues. It does not address the monthly enrollment benefit or cost-sharing as discussed above.



What definition are Tribal advocates and the Administration supporting?

Tribal advocates support changing the ACA definition of Indian eligibility to be consistent with the eligibility rules of the Indian Health Service (IHS) and Medicaid. The language has been developed in consultation with Tribal policy experts and also been approved by HHS and IHS.

Why is fixing the Indian definition issue a good thing?

The current ACA definition could result in many AI/ANs being subjected to tax penalties for not having insurance, even though they are eligible for Indian health care programs. It will also result in inconsistent eligibility determinations for AI/AN special provisions for health care services under the ACA, Medicaid and IHS programs. Bringing AI/ANs onto the Exchanges is an opportunity to also bring additional dollars into the IHS and tribal health system which is currently funded at only 56 percent of total need. At a time when federal discretionary spending is significantly decreasing due to sequestration, extra revenue is critical to ensure that AI/ANs receive the care they need.

Why should AI/ANs who are not enrolled Tribal members get these benefits?

The Indian Health Service is a program founded upon the federal government's trust responsibility to provide health care services to AI/AN people; a federal promise made in treaties and authorized by the Constitution. Individuals of AI/AN descent are entitled to receive IHS services, even if they are not members of federally recognized Tribes or ANCSA shareholders. In order to fulfill the federal government's trust responsibility to all AI/AN people, the ACA definitions of Indian should be made consistent with the long established IHS eligibility regulations.

Who will be left-out under the current ACA definitions?

Tribes, as sovereign nations, determine their membership requirements, which vary greatly across Indian Country, so many AI/AN individuals who, although they are eligible for IHS services, will not have afforded the benefits and protections due to AI/AN in the ACA for a variety of reasons. Some examples include:

- Children born into Tribes that do not permit enrollment until age 18 would be determined ineligible as "Indians" under the ACA, although they would continue to be treated as such by IHS and by CMS for Medicaid.
- California Indians who are entitled to IHS and Medicaid services as Indians will not be treated as Indian under the ACA.
- In Alaska, many Alaska Natives who are too young to have enrolled in an Alaska Native Claims Settlement Act Corporations, which largely ended in the 1970s, continue to be eligible for IHS services but will be denied the special protections due Indians in the ACA, because they have not yet become shareholders which is mostly dependent on inheritance from a parent or grandparent who may still be living.