

§ 1641. Treatment of payments under Social Security Act health benefits programs

(a) Disregard of Medicare, Medicaid, and CHIP payments in determining appropriations

Any payments received by an Indian health program or by an urban Indian organization under title XVIII, XIX, or XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.] for services provided to Indians eligible for benefits under such respective titles shall not be considered in determining appropriations for the provision of health care and services to Indians.

(b) Nonpreferential treatment

Nothing in this chapter authorizes the Secretary to provide services to an Indian with coverage under title XVIII, XIX, or XI¹ of the Social Security Act in preference to an Indian without such coverage.

(c) Use of funds

(1) Special fund

(A) 100 percent pass-through of payments due to facilities

Notwithstanding any other provision of law, but subject to paragraph (2), payments to which a facility of the Service is entitled by reason of a provision of title XVIII or XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.] shall be placed in a special fund to be held by the Secretary. In making payments from such fund, the Secretary shall ensure that each Service unit of the Service receives 100 percent of the amount to which the facilities of the Service, for which such Service unit makes collections, are entitled by reason of a provision of either such title.

(B) Use of funds

Amounts received by a facility of the Service under subparagraph (A) by reason of a provision of title XVIII or XIX of the Social Security Act shall first be used (to such extent or in such amounts as are provided in appropriation Acts) for the purpose of making any improvements in the programs of the Service operated by or through such facility which may be necessary to achieve or maintain compliance with the applicable conditions and requirements of such respective title. Any amounts so received that are in excess of the amount necessary to achieve or maintain such conditions and requirements shall, subject to consultation with the Indian tribes being served by the Service unit, be used for reducing the health resource deficiencies (as determined in section 1621(c) of this title) of such Indian tribes, including the provision of services pursuant to section 1621d of this title.

(2) Direct payment option

Paragraph (1) shall not apply to a tribal health program upon the election of such program under subsection (d) to receive payments directly. No payment may be made out of the special fund described in such paragraph with

respect to reimbursement made for services provided by such program during the period of such election.

(d) Direct billing

(1) In general

Subject to complying with the requirements of paragraph (2), a tribal health program may elect to directly bill for, and receive payment for, health care items and services provided by such program for which payment is made under title XVIII, XIX, or XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.] or from any other third party payor.

(2) Direct reimbursement

(A) Use of funds

Each tribal health program making the election described in paragraph (1) with respect to a program under a title of the Social Security Act [42 U.S.C. 301 et seq.] shall be reimbursed directly by that program for items and services furnished without regard to subsection (c)(1), except that all amounts so reimbursed shall be used by the tribal health program for the purpose of making any improvements in facilities of the tribal health program that may be necessary to achieve or maintain compliance with the conditions and requirements applicable generally to such items and services under the program under such title and to provide additional health care services, improvements in health care facilities and tribal health programs, any health care-related purpose (including coverage for a service or service within a contract health service delivery area or any portion of a contract health service delivery area that would otherwise be provided as a contract health service), or otherwise to achieve the objectives provided in section 1602 of this title.

(B) Audits

The amounts paid to a tribal health program making the election described in paragraph (1) with respect to a program under title XVIII, XIX, or XXI of the Social Security Act shall be subject to all auditing requirements applicable to the program under such title, as well as all auditing requirements applicable to programs administered by an Indian health program. Nothing in the preceding sentence shall be construed as limiting the application of auditing requirements applicable to amounts paid under title XVIII, XIX, or XXI of the Social Security Act.

(C) Identification of source of payments

Any tribal health program that receives reimbursements or payments under title XVIII, XIX, or XXI of the Social Security Act shall provide to the Service a list of each provider enrollment number (or other identifier) under which such program receives such reimbursements or payments.

(3) Examination and implementation of changes

(A) In general

The Secretary, acting through the Service and with the assistance of the Administrator

¹ So in original. Probably should be "XXI".

of the Centers for Medicare & Medicaid Services, shall examine on an ongoing basis and implement any administrative changes that may be necessary to facilitate direct billing and reimbursement under the program established under this subsection, including any agreements with States that may be necessary to provide for direct billing under a program under title XIX or XXI of the Social Security Act [42 U.S.C. 1396 et seq., 1397aa et seq.].

(B) Coordination of information

The Service shall provide the Administrator of the Centers for Medicare & Medicaid Services with copies of the lists submitted to the Service under paragraph (2)(C), enrollment data regarding patients served by the Service (and by tribal health programs, to the extent such data is available to the Service), and such other information as the Administrator may require for purposes of administering title XVIII, XIX, or XXI of the Social Security Act.

(4) Withdrawal from program

A tribal health program that bills directly under the program established under this subsection may withdraw from participation in the same manner and under the same conditions that an Indian tribe or tribal organization may retrocede a contracted program to the Secretary under the authority of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.). All cost accounting and billing authority under the program established under this subsection shall be returned to the Secretary upon the Secretary's acceptance of the withdrawal of participation in this program.

(5) Termination for failure to comply with requirements

The Secretary may terminate the participation of a tribal health program or² in the direct billing program established under this subsection if the Secretary determines that the program has failed to comply with the requirements of paragraph (2). The Secretary shall provide a tribal health program with notice of a determination that the program has failed to comply with any such requirement and a reasonable opportunity to correct such noncompliance prior to terminating the program's participation in the direct billing program established under this subsection.

(e) Related provisions under the Social Security Act

For provisions related to subsections (c) and (d), see sections 1880, 1911, and 2107(e)(1)(D) of the Social Security Act [42 U.S.C. 1395qq, 1396j, 1397gg(e)(1)(D)].

(Pub. L. 94-437, title IV, §401, Sept. 30, 1976, 90 Stat. 1408; Pub. L. 102-573, title IV, §401(a), Oct. 29, 1992, 106 Stat. 4565; Pub. L. 111-148, title X, §10221(a), Mar. 23, 2010, 124 Stat. 935.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsections (a) to (d), 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. 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. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

This chapter, referred to in subsec. (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.

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

CODIFICATION

Amendment by Pub. L. 111-148 is based on section 151 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 to general amendment by Pub. L. 102-573, section 401 of Pub. L. 94-437, in subsec. (a) amended sections 1395f and 1395n of Title 42, The Public Health and Welfare, in subsec. (b) enacted section 1395qq of Title 42, and in subsections (c) and (d) enacted provisions set out as notes under section 1395qq of Title 42 which were re-stated in this section.

AMENDMENTS

2010—Pub. L. 111-148 amended section generally. Prior to amendment, section related to treatment of payments received by a hospital or skilled nursing facility of the Service for services to Indians under medicare program in determining appropriations for health care and services to Indians.

1992—Pub. L. 102-573 amended section generally, substituting subsections (a) and (b) for former subsections (a) to (d). See Codification note above.

§ 1642. Purchasing health care coverage

(a) In general

Insofar as amounts are made available under law (including a provision of the Social Security Act [42 U.S.C. 301 et seq.], the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), or other law, other than under section 1644 of this title) to Indian tribes, tribal organizations, and urban Indian organizations for health benefits for Service beneficiaries, Indian tribes, tribal organizations, and urban Indian organizations may use such amounts to purchase health benefits coverage (including coverage for a service, or service within a contract health service delivery area, or any portion of a contract health service delivery area that would otherwise be provided as a contract health service) for such beneficiaries in any manner, including through—

- (1) a tribally owned and operated health care plan;
- (2) a State or locally authorized or licensed health care plan;
- (3) a health insurance provider or managed care organization;
- (4) a self-insured plan; or
- (5) a high deductible or health savings account plan.

² So in original. The word "or" probably should not appear.