

Chapter 4
OTHER BENEFICIARIES

Part 2

Table of Contents

	<u>Section</u>	<u>Page</u>
Background.....	2-4.8B	25
Authority.....	2-4.8C	26
Policy.	2-4.8D	26
Procedures.....	2-4.8E	27
Request by Tribe(s) to Serve Ineligible Individuals.....	2-4.8E(1)	27
Joint Determination.....	2-4.8E(2)	28
Case-by-Case Determination.....	2-4.8E(3)	28
Necessary Determinations Under Section 813.....	2-4.8E(4)	28
Factors for Making Determination	2-4.8F	30
Reasonable Alternative Health Facility or Services.....	2-4.8F(1)	31
Denial or Diminution of Services.....	2-4.8F(2)	32
Tribally-initiated Termination.....	2-4.8G	33
Single Tribe Service Area.....	2-4.8G(1)	33
Multi- Service Area.....	2-4.8G(2)	33
Liability for Payment.....	2-4.8H	34

Manual Appendix

Statutes That Allow Health Services to be Provided to Ineligible Individuals

at IHS Facilities	Appendix E
Indian Health Care Improvement Act, Public Law 94-437, as Amended, Section 813".....	Appendix F
IHS/ Section 813(b)(1)(A) Joint Determination Worksheet".....	Appendix G

Chapter 4
OTHER BENEFICIARIES

2-4.8 PROVISION OF HEALTH SERVICES TO INELIGIBLE INDIVIDUALS UNDER SECTION 813(b)(1)(A) OF THE INDIAN HEALTH CARE IMPROVEMENT ACT

- A. Purpose. The purpose of this section is to establish policy and guidance for the Indian Health Service (IHS) to use in making a determination with a Tribe or Tribes when direct care health services may be provided to ineligible individuals at IHS facilities under section 813(b)(1)(A) of the Indian Health Care Improvement Act (IHCIA).
- B. Background. Section 813(b)(1)(A) is only one of several statutes that grant the IHS the authority to provide health services to certain classes of ineligibles in certain situations at IHS facilities. Examples of other statutes that allow the IHS to provide health services to certain classes of ineligibles are: Commissioned Corps, active and retired, and their dependents (42 United States Code (U.S.C.) § 253, 42 Code of Federal Regulations (C.F.R.) 31.2(c) and 42 C.F.R. 31.9); Federal employees and their dependents at remote stations (42 U.S.C. § 251(b)); Children and Spouses of eligible Indians (25 U.S.C. § 1680c(a)); and emergency treatment (25 U.S.C. § 1680c(c)). A table of these statutes is included as Appendix E.

Chapter 4
OTHER BENEFICIARIES

- C. Authority. Section 813(b)(1)(A) of the IHCA, Public Law 94-437, 25 U.S.C. § 1680c(b)(1)(A). The full text of section 813 is included as Appendix F.
- D. Policy. It is the policy of the Agency that at IHS-operated health facilities, direct care health services may be provided to individuals who reside within the service area of the service unit and who are not eligible for health services under any other provision of law, only upon the request of the Indian Tribe or all Tribes served by such service unit, and upon a joint determination by the IHS and the Tribe or Tribes that the criteria in section 813(b)(1)(A)(ii)(I) and (II) have been met.

It is recognized that Tribes and Tribal organizations operating health programs under the Indian Self-Determination and Education Assistance Act (ISDEAA), Public Law (P.L.) 93-638, are not bound by IHS policy. However, the IHS will be guided by the criteria in this Chapter when a Tribe or Tribal organization proposes to extend direct care health services to ineligible individuals under section 813(b)(1)(B) at facilities operated by Tribes or Tribal organizations under the ISDEAA.

Chapter 4
OTHER BENEFICIARIES

E. Procedures.

- (1) Request by Tribe(s) to Serve Ineligible Individuals. Upon the written request of all Tribes served by a service unit that direct health services be provided to ineligible individuals under section 813(b)(1)(A), IHS staff shall use a worksheet (See Appendix G) to help clarify the Tribal request and obtain the following information:
- a. The types of health services the Tribe or Tribes request that the IHS provide and whether such services are to be episodic or routine.
 - b. A list of alternative health facilities or services located within a 30-mile radius of the IHS health facility where services are proposed to be provided.
 - c. The estimated population of ineligible individuals residing within the service area of the service unit and the estimated population of ineligible individuals expected to utilize the IHS health facility.

This data will be used to estimate the increased workload on the

Chapter 4
OTHER BENEFICIARIES

IHS health facility should health services be provided to these individuals.

- (2) Joint Determination. After the IHS has obtained the above information from the Tribe or Tribes, IHS staff will consult with the Indian Tribe or Tribes served by the service unit and make a joint determination regarding whether the criteria of section 813(b)(1)(A)(ii)(I) and (II) have been met.
- (3) Case-by-Case Determination. The determination under section 813(b) of whether there are reasonable alternative health facilities or services available and whether there will be a denial or diminution of services to eligible Indians is a case-by-case determination. This determination shall be made by taking into account and weighing the information the Tribe or Tribes provide, the factors that are included in this chapter, and other relevant factors if they are consistent with the intent of this chapter.
- (4) Necessary Determinations Under Section 813.
 - a. No Reasonable Alternative Health Facility or Services. The first determination that must be made is whether there is any reasonable

Chapter 4
OTHER BENEFICIARIES

alternative health facility or services available for the services proposed to be provided to ineligible individuals. If there is a reasonable alternative health facility or services available, health services shall not be provided to individuals under the authority of 813(b)(1)(A). In such an instance, further analysis into the second necessary determination (whether service to such ineligible individuals will result in a denial or diminution of services to eligible individuals) will not be necessary.

- b. No Denial or Diminution of Services. If there is no reasonable alternative health facility or services available then a determination of whether the provision of health services to ineligible individuals will result in a denial or diminution of health services to eligible Indians must be made.

Should a Tribe or Tribes wish that only certain health services be provided to ineligible individuals, or if the provision of a complete range of health services to ineligible individuals would result in diminished services to eligible Indian beneficiaries, a Tribe may request that only certain defined health services be provided to

Chapter 4
OTHER BENEFICIARIES

ineligible individuals.

- c. Final Determination to be in Writing. After following the procedures and weighing the factors in this chapter, the Chief Executive Officer (CEO) of the service unit shall present a recommended decision to the Area Director for formal approval. The determination of the Area Director shall be in writing so that it is clear that if health services are provided to ineligible individuals under the authority of section 813(b)(1)(A) that the provision of such services is within the scope of employment of the federal employees providing the services. Any written determination shall also be sent to the Tribe(s). In the event of an adverse determination, Tribes should be notified of their right to appeal the Area Director's decision to the Director, IHS. Affirmative determinations shall be reviewed periodically, and as circumstances dictate, to ensure that the provision of health care services to ineligible individuals is still allowable under the criteria set forth in this Chapter and section 813(b)(1)(A).

F. Factors for Making Determination.

Chapter 4
OTHER BENEFICIARIES

- (1) Reasonable Alternative Health Facility or Services. Generally, a reasonable alternative health facility or services will be determined to exist if there is, within a 30-mile radius of the IHS health facility, a private health care facility or private health care providers (e.g., physicians, surgeons, dentists, optometrists, etc.) available to provide necessary health care services. The following criteria are to be considered in making a determination of whether there is reasonable alternative health facility or services available:
- a. Health care facilities located (e.g., hospitals and hospital beds, clinics, etc.) within a 30-mile radius of the IHS health facility.
 - b. The range of services available at these health care facilities.
 - c. The number and type of health care providers (e.g., physicians, surgeons, dentists, optometrists, pharmacists, etc.) practicing within a 30-mile radius of the IHS health facility.
 - d. The agency may consider other factors the Tribe considers

Chapter 4
OTHER BENEFICIARIES

important. These factors will be considered on a case-by-case basis. Such factors might include transportation that is hazardous and protracted because of unfavorable climatic conditions or unsurfaced or mountainous roads.

- (2) Denial or Diminution of Services. In the event a determination is made that no reasonable alternative health care facility or services exist, direct care health services may be provided to ineligible individuals to the extent that services to eligible Indian beneficiaries are neither diminished nor denied.

Whether services to eligible Indian beneficiaries will be denied or diminished is to be determined by considering the estimated population of ineligible individuals expected to utilize services and the impact that providing services to these ineligible individuals under section 813(b)(1)(A) will have on such factors as: waiting times for medical appointments, physician to patient ratio, quality of services, availability of services, and any other relevant factors that impact on the reduction of services to eligible Indians.

Chapter 4
OTHER BENEFICIARIES

- G. Tribally-initiated Termination. The governing body of a Tribe or Tribes may request at any time that services that are being provided to ineligible individuals under section 813(b)(1)(A) be discontinued.
- (1) Single Tribe Service Area. Pursuant to section 813(b)(3)(A): In the case of a service area which serves only one Indian Tribe, the authority of the Secretary to provide health services under section 813(b)(1)(A) shall terminate at the end of the fiscal year succeeding the fiscal year in which the governing body of the Indian Tribe revokes its concurrence to the provision of such health services.
- (2) Multi-Tribal Service Area. Pursuant to section 813(b)(3)(B): In the case of a multi-Tribal service area, the authority of the Secretary to provide health services under section 813(b)(1)(A) shall terminate at the end of the fiscal year succeeding the fiscal year in which at least 51 percent of the number of Indian Tribes in the service area revoke their concurrences to the provision of such health services.

Upon the request by a Tribe or Tribes to discontinue services to such

Chapter 4
OTHER BENEFICIARIES

ineligible individuals, the IHS Area Director will determine the best method of discontinuation of services; how notice should be provided; how much notice is necessary and when services are to be discontinued. Consultation with the IHS Office of Public Health, Division of Regulatory and Legal Affairs and/or Regional Counsel as needed, may be appropriate.

- H. Liability for Payment. Persons receiving health services provided by reason of section 813(b)(1)(A) shall be liable for payment of such health services and shall be billed under existing IHS reimbursement authorities and billing practices.

Appendix E

<p align="center">Statutes That Allow Health Services to Be Provided to Ineligible Individuals at IHS Facilities</p>					
Statute:	Sec. 813(b)(1)(A) IHCIA (Subject of Draft Circular)	42 USC 251(b)	42 USC 253	Sec. 813(a) IHCIA	Sec. 813(c) IHCIA
Who may be provided services under the statute:	All ineligibles who reside within the service area of the service unit.	Federal employees and dependents.	Commissioned Corps of PHS and dependents. <i>(Commission Corps active duty and retirees. 42 CFR 31.2(c). Dependents of commissioned corp. active duty and retirees. 42 CFR 31.9.)</i>	Children <i>(under 19 and natural or adopted child, step-child, foster-child, legal ward or orphan of an eligible Indian)</i> and Spouses of eligible Indians.	Anyone under Special Limited Situations <i>(medical emergency; prevent spread of disease or public health hazard; woman pregnant with eligible Indian's child; and immediate family members if directly related to treatment of eligible person).</i>
Location where services are authorized to be provided at:	An IHS facility where: ⁽¹⁾ there are no reasonable alternative facilities or services available and ⁽²⁾ no denial or diminution of services to eligibles will result.	Remote PHS facilities (IHS facilities must be designated as "remote" by Director, IHS under criteria of IHS Manual Part 2-4.7).	PHS facilities (subject to HRSA reimbursement guidelines).	Any IHS facility.	Any IHS facility.
Who has delegated authority to approve:	Area Director. After a request by a tribe or tribes.	Director, IHS.	Director, IHS.	Children- automatic Spouses- by Tribal resolution.	Medical Officer in charge. 42 CFR 136.12.
What services are authorized:	Direct care.	Direct care.	Direct care.	Direct care and CHS.	Direct - limited to the specific situations and services listed.
Conditions:	IHS must be reimbursed for services.	IHS must be reimbursed for services.	IHS must be reimbursed for services under an Economy Act arrangement.	Children are treated as eligibles. Spouses treated as eligibles except they cannot be counted in user population.	Limited to the specific situations listed.

Appendix F
Indian Health Care Improvement Act, Public Law 94-437, as
Amended,

HEALTH SERVICES FOR INELIGIBLE PERSONS

Sec. 813. (a)(1) Any individual who--

- (A) has not attained 19 years of age,
- (B) is the natural or adopted child, step-child, foster-child, legal ward, or orphan of an eligible Indian, and
- (C) is not otherwise eligible for health services provided by the Service,

shall be eligible for all health services provided by the Service on the same basis and subject to the same rules that apply to eligible Indians until such individual attains 19 years of age. The existing and potential health needs of all such individuals shall be taken into consideration by the Service in determining the need for, or the allocation of, the health resources of the service. If such an individual has been determined to be legally incompetent prior to attaining 19 years of age, such individual shall remain eligible for such services until one year after the date of such disability has been removed.

(2) Any spouse of an eligible Indian who is not an Indian, or who is of Indian descent but not otherwise eligible for the health services provided by the Service, shall be eligible for such health services if all of such spouses are made eligible, as a class, by an appropriate resolution of the governing body of the Indian tribe of the eligible Indian. The health needs of persons made eligible under this paragraph shall not be taken into consideration by the Service in determining the need for, or allocation of, its health resources.

(b)(1)(A) The Secretary is authorized to provide health services under this subsection through health facilities operated directly by the Service to individuals who reside within the service area of a service unit and who are not eligible for such health services under any other subsection of this section or under any other provision of law if--

(i) the Indian tribe (or, in the case of a multi-tribal service area, all the Indian tribes) served by such service unit requests such provision of health services to such individuals, and

(ii) the Secretary and the Indian tribe or tribes have jointly determined that--

(I) the provision of such health services will not result in a denial or diminution of health services to eligible Indians, and

(II) there is no reasonable alternative health facility or services, within or without the service area of such service unit, available to meet the health needs of such individuals.

(B) In the case of health facilities operated under a contract entered into under the Indian Self-Determination Act, the governing body of the Indian tribe or tribal organization providing health services under such contract is authorized to determine whether health services should be provided under such contract to individuals who are not eligible for such health services under any other subsection in this section or under any other provision of law. In making such determinations, the governing body of the Indian tribe or tribal organization shall take into account the considerations described in subparagraph (A)(ii).

Appendix F

(2) (a) Persons receiving health services provided by the Service by reason of this subsection shall be liable for payment of such health services under a schedule of charges prescribed by the Secretary which, in the judgment of the Secretary, results in reimbursement in an amount not less than the actual cost of providing the health services. Notwithstanding section 1880(c) of the Social Security Act, section 402(a) of this Act, or any other provision of law, amounts collected under this subsection, including medicare or medicaid reimbursements under titles XVIII and XIX of the Social Security Act, shall be credited to the account of the facility providing the service and shall be used solely for the provision of health services within that facility. Amounts collected under this subsection shall be available for expenditure within such facility for not to exceed one fiscal year after the fiscal year in which collected.

(B) Health services may be provided by the Secretary through the Service under this subsection to an indigent person who would not be eligible for such health services but for the provisions of paragraph (1) only if an agreement has been entered into with a State or local government under which the State or local government agrees to reimburse the Service for the expenses incurred by the Service in providing such health services to such indigent person.

(3) (A) In the case of a service area which serves only one Indian tribe, the authority of the Secretary to provide health services under paragraph (1) (A) shall terminate at the end of the fiscal year succeeding the fiscal year in which the governing body of the Indian tribe revokes its concurrence to the provision of such health services.

(B) In the case of a multi-tribal service area, the authority of the Secretary to provide health services under paragraph (1) (A) shall terminate at the end of the fiscal year succeeding the fiscal year in which at least 51 percent of the number of Indian tribes in the service area revoke their concurrence to the provisions of such health services.

(c) The Service may provide health services under this subsection to individuals who are not eligible for health services provided by the Service under any other subsection of this section or under any other provision of law in order to--

- (1) achieve stability in a medical emergency,
- (2) prevent the spread of a communicable disease or otherwise deal with a public health hazard,
- (3) provide care to non-Indian women pregnant with an eligible Indian's child for the duration of the pregnancy through post partum, or
- (4) provide care to immediate family members of an eligible person if such care is directly related to the treatment of the eligible person.

(d) Hospital privileges in health facilities operated and maintained by the Service or operated under a contract entered into under the Indian Self-Determination Act may be extended to non-Service health care practitioners who provide services to persons described in subsection (a) or (b). Such non-Service health care practitioners may be regarded as employees of the Federal Government for purposes of section 1346(b) and chapter 171 of title 28, United States Code (relating to Federal tort claims) only with respect to acts or omissions which occur in the course of providing services to eligible persons as a part of the conditions under which such hospital privileges are extended.

(e) For purposes of this section, the term "eligible Indian" means any Indian who is eligible for health services provided by the Service without regard to the provisions of this section.

Appendix G

IHS/TRIBAL SECTION 813(b)(1)(A) JOINT DETERMINATION
WORKSHEET

Please check all boxes that apply:

1. Types of services to be requested for provision under section 813:

- Medical care
- Dental care
- Pharmacy ___ 340B ___ FSS
- Mental health
- Other _____

2. Categories of Potential Ineligible Individuals for whom services are requested to be provided:

- All ineligible individuals residing within the service area of the service unit
- Others _____

3. Additional extenuating factors to consider in case-by-case justification (describe):

- Distance from alternate services _____
 - Episodic inclement weather _____
 - Other local factors _____
- _____
- _____
- _____
- _____