

Public Health Service, HHS

§ 136.25

population residing in a contract health service delivery area, priorities for service shall be determined on the basis of relative medical need.

(f) *Alternate resources.* The term “alternate resources” is defined in § 136.61(c) of Subpart G of this part.

[64 FR 58319, Oct. 28, 1999. Redesignated and amended at 67 FR 35342, May 17, 2002]

§ 136.24 Authorization for contract health services.

(a) No payment will be made for medical care and services obtained from non-Service providers or in non-Service facilities unless the applicable requirements of paragraphs (b) and (c) of this section have been met and a purchase order for the care and services has been issued by the appropriate ordering official to the medical care provider.

(b) In nonemergency cases, a sick or disabled Indian, an individual or agency acting on behalf of the Indian, or the medical care provider shall, prior to the provision of medical care and services notify the appropriate ordering official of the need for services and supply information that the ordering official deems necessary to determine the relative medical need for the services and the individual’s eligibility. The requirement for notice prior to providing medical care and services under this paragraph may be waived by the ordering official if:

(1) Such notice and information are provided within 72 hours after the beginning of treatment or admission to a health care facility; and

(2) The ordering official determines that giving of notice prior to obtaining the medical care and services was impracticable or that other good cause exists for the failure to provide prior notice.

(c) In emergency cases, a sick or disabled Indian, or an individual or agency acting on behalf of the Indian, or the medical care provider shall within 72 hours after the beginning of treatment for the condition or after admission to a health care facility notify the appropriate ordering official of the fact of the admission or treatment, together with information necessary to determine the relative medical need for the services and the eligibility of the Indian for the services. The 72-hour pe-

riod may be extended if the ordering official determines that notification within the prescribed period was impracticable or that other good cause exists for the failure to comply.

§ 136.25 Reconsideration and appeals.

(a) Any person to whom contract health services are denied shall be notified of the denial in writing together with a statement of the reason for the denial. The notice shall advise the applicant for contract health services that within 30 days from the receipt of the notice the applicant:

(1) May obtain a reconsideration by the appropriate Service Unit Director of the original denial if the applicant submits additional supporting information not previously submitted; or

(2) If no additional information is submitted, may appeal the original denial by the Service Unit Director to the appropriate Area or program director. A request for reconsideration or appeal shall be in writing and shall set forth the grounds supporting the request or appeal.

(b) If the original decision is affirmed on reconsideration, the applicant shall be so notified in writing and advised that an appeal may be taken to the Area or program director within 30 days of receipt of the notice of the reconsidered decision. The appeal shall be in writing and shall set forth the grounds supporting the appeal.

(c) If the original or reconsidered decision is affirmed on appeal by the Area or program director, the applicant shall be so notified in writing and advised that a further appeal may be taken to the Director, Indian Health Service, within 30 days of receipt of the notice. The appeal shall be in writing and shall set the grounds supporting the appeal. The decision of the Director, Indian Health Service, shall constitute final administrative action.

Subpart D [Reserved]

Subpart E—Preference in Employment

AUTHORITY: 25 U.S.C. 44, 45, 46 and 472; Pub. L. 83-568, 68 Stat 674, 42 U.S.C. 2003.

§ 136.41

SOURCE: 64 FR 58321, Oct. 28, 1999, unless otherwise noted. Redesignated at 67 FR 35342, May 17, 2002.

§ 136.41 Definitions.

For purposes of making appointments to vacancies in all positions in the Indian Health Service, a preference will be extended to persons of Indian descent who are:

- (a) Members of any recognized Indian tribe now under Federal jurisdiction;
- (b) Descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation;
- (c) All others of one-half or more Indian blood of tribes indigenous to the United States;
- (d) Eskimos and other aboriginal people of Alaska; or
- (e) Until January 4, 1990, or until the Osage Tribe has formally organized, whichever comes first, a person of at least one-quarter degree Indian ancestry of the Osage Tribe of Indians, whose rolls were closed by an act of Congress.

§ 136.42 Appointment actions.

- (a) Preference will be afforded a person meeting any one of the definitions of § 136.41 whether the placement in the position involves initial appointment, reappointment, reinstatement, transfer, reassignment, promotion, or any other personnel action intended to fill a vacancy.
- (b) Preference eligibles may be given a schedule A excepted appointment under 5 CFR 213.3116(b)(8). If the individuals are within reach on a Civil Service Register, they may be given a competitive appointment. [64 FR 58321, Oct. 28, 1999. Redesignated and amended at 67 35342, May 17, 2002]

§ 136.43 Application procedure for preference eligibility.

To be considered a preference eligible, the person must submit with the employment application a Bureau of Indian Affairs certification that the person is an Indian as defined by § 136.41 except that an employee of the Indian Health Service who has a certificate of preference eligibility on file in the Official Personnel Folder is not required to resubmit such proof but

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may instead include a statement on the application that proof of eligibility is on file in the Official Personnel Folder.

[64 FR 58319, Oct. 28, 1999. Redesignated and amended at 67 35342, May 17, 2002]

Subpart F—Abortions and Related Medical Services in Indian Health Service Facilities and Indian Health Service Programs

AUTHORITY: Sec. 1, 42 Stat. 208, (25 U.S.C. 13); sec. 1, Stat. 674, (42 U.S.C. 2001); sec. 3, 68 Stat. 674, (42 U.S.C. 2003).

SOURCE: 64 FR 58322, Oct. 28, 1999, unless otherwise noted. Redesignated at 67 FR 35342, May 17, 2002.

§ 136.51 Applicability.

This subpart is applicable to the use of Federal funds in providing health services to Indians in accordance with the provisions of subparts A, B, and C of this part.

§ 136.52 Definitions.

As used in this subpart:

Physician means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery at an Indian Health Service or tribally run facility, or by the state in which he or she practices.

§ 136.53 General rule.

Federal funds may not be used to pay for or otherwise provide for abortions in the programs described in § 136.51, except under the circumstances described in § 136.54.

[64 FR 58322, Oct. 28, 1999. Redesignated and amended at 67 35342, May 17, 2002]

§ 136.54 Life of the mother would be endangered.

Federal funds are available for an abortion when a physician has found and so certified in writing to the appropriate tribal or other contracting organization, or Service Unit or Area Director, that “on the basis of my professional judgment the life of the mother would be endangered if the fetus were carried to term.” The certification