Indian Health Service

14th Annual Partnership Conference

August 13 – 15, 2013

Sheraton Denver Downtown Hotel ~ Denver, CO

Contract Health Service Regulation Review & Interpretation

Presented by:

Edwin C. Chasing Hawk

Health System Specialist
Aberdeen Area Indian Health Service

IHS/CHS Funding History

Between 1887 and 1934 over 90 million acres of land were ceded by Tribes to the Federal Government.

- **Snyder Act of 1921:** Authorized Congress to appropriate funds "for the benefit, care and assistance of the Indians throughout the United States" including "conservation and preservation of health".
- **Federal Trust Responsibility:** Federal Government provides comprehensive services to Indian people through the Bureau of Indian Affairs (BIA) and IHS.
- **Transfer Act of 1954**: Responsibility of Indian Health services were transferred from the BIA to the Dept of Health, Education and Welfare, now the Dept. of Health and Human Services. In 1955 the IHS was created as a federal agency.
- **Indian Health Care Improvement Act (IHCIA):** In 1976 President Ford signed the IHCIA reaffirming the U.S. obligation for Indian Health, permanently reauthorized in March 2010.

Today the IHCIA and the Snyder Act serve as the foundation for Health Services and Programs provided by the IHS.

- **All information provided by the National Indian Health Board.**

REFERENCES

- **CHS Regulation:**
  - **Code of Federal Regulations (CFR): Title 42, Volume 1, Subchapter M – Indian Health Service**
    - Part 136 – Indian Health, Subpart C – Contract Health Services.
  - **Establish general principles and program requirements for carrying out the Indian Health programs.**
- **CHS Manual:**
  - **Indian Health Manual**
    - Part 2 – Services to Indians and Others
      - Chapter 3 – Contract Health Service
- **The Indian Health Care Improvement Act**

Contract Health Service
Regulation Review & Interpretation

- **42 CFR §136.12 Persons to whom services will be provided.**
  - **DIRECT CARE**
    - *"Services will be made available, as medically indicated, to persons of Indian* ***descent***..*"*
    - *Also made available to non-Indian woman pregnant with an eligible Indian's child, but only during the period of her pregnancy.*
    - *Non-Indian member of eligible Indian's household if determined necessary to control disease or public health hazard.*

Contract Health Service
Regulation Review & Interpretation

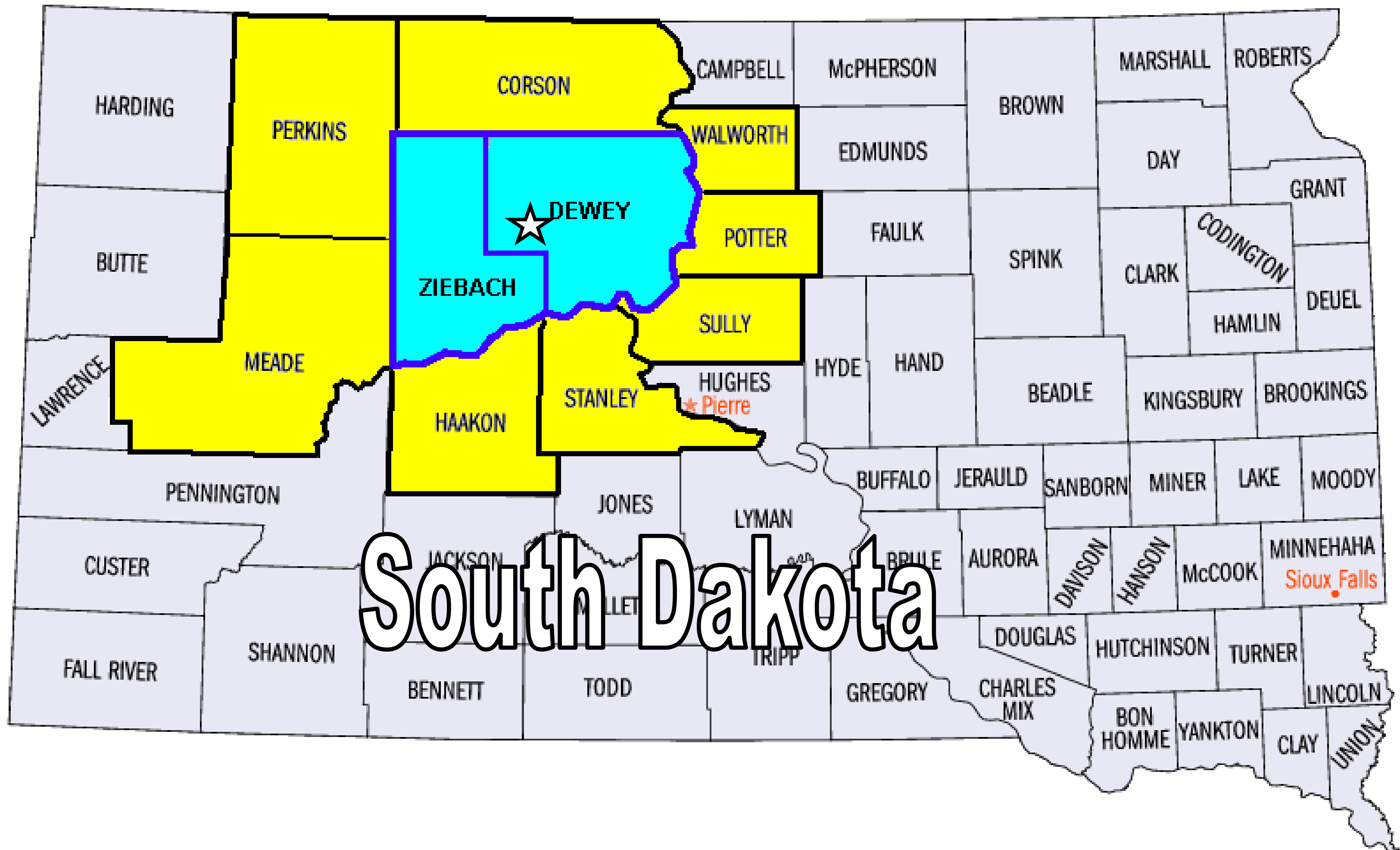
- **42 CFR §136.22 Establishment of contract health service delivery areas.**
  - **"CHSDA"**
    - **"…***the contract health services delivery area shall consist of a county which includes all or part of a reservation, and any county or counties which have a common boundary with the reservation***".**
    - CHSDA Notices are periodically provided in the Federal Register.

Next slide is an example of a CHSDA for an IHS facility in South Dakota.

☆ Eagle Butte IHS Hospital

(Cheyenne River Sioux Tribe - Reservation)

Contract Health Service Delivery Area (CHSDA)



Contract Health Service
Regulation Review & Interpretation

- **42 CFR §136.23 Persons to whom contract health services will be provided.**
  - *"…[CHS] will be made available as medically indicated, when necessary health services by an [IHS] are not reasonably accessible or available…"*
  - "**Reside within** the [U.S.] **and on a reservation**…"
  - "**Do not reside on a reservation but reside within a [CHSDA] and**:
    - "Are members of the tribe or tribes for which reservation was established and;"
    - "Maintain close economic and social ties with that tribe or tribes"
      - **Employed by the tribe or tribes and/or married to a tribal member**
  - **Students & Transients** "…who would be eligible for [CHS] at the place of their **permanent residence** but are **temporarily absent** from their residence…"
    - **Student**: Full time attendance, during breaks, 180 days after completion.
    - **Transient:** Temporarily absent from residence…seasonal or migratory workers
  - **Other Persons outside the CHSDA**: who are neither student or transient, will be eligible for CHS not to exceed 180 days from such departure.

Contract Health Service
Regulation Review & Interpretation

- **42 CFR §136.23 Persons to whom contract health services will be provided (continued)**
  - **Foster Children:** Indian **children** placed in foster care outside a CHSDA by order of a court and who were eligible for CHS at time of court order shall continue to be eligible for CHS while in foster care.
  - **Priorities:** "When funds are insufficient to provide volume services as needed…priorities for service shall be determined on relative medical need. (CHS Spending Plan)
    - **CHS Committee:** Review and monitor the referral and expenditure of CHS funds. Criteria for payment decision:
      - **Must be within Medical Priorities**
      - **Funds must be available**
      - **Services must not be accessible or available at an IHS or Tribal facility**
      - **Must be CHS eligible**
      - **CHS referral shall be made to appropriate provider, must not be deferred where full reimbursement through an alternate resource is available.**

- **42 CFR §136.24 Authorization for contract health services.**
  - **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/services shall notify the appropriate ordering official and supply information.
  - **Prior notification may be waived if**: Such notice and information are provided within 72 hours after the beginning of treatment or admission and the ordering official determines that giving notice prior to obtaining care/services was impracticable.
  - **Emergency Cases**: notify (ordering official) within 72 hours after beginning of treatment, together with information necessary to determine the relative medical need. (**72 hours may be extended**)
    - 30 days for Elderly & Disabled.

Contract Health Service
Regulation Review & Interpretation

- **42 CFR §136.25 Reconsideration & Appeals.**
  - Any person to whom [CHS] are denied shall be notified of the denial **in writing** together with a statement of the **reason for denial**. The notice shall advise the applicant for CHS that within 30 days from the **receipt of the notice** the applicant:
    - May obtain a reconsideration by the appropriate SUD/CEO of the **original denial**, if additional supporting information not previously submitted, or;
    - If no additional information is submitted may appeal the **original denial** to the appropriate Area Director. (must be in writing)
    - If the original decision is affirmed on reconsideration , the applicant shall be notified in writing of the next appeal level, again may appeal within 30 days. **(Tribal program appeal levels may differ)**
    - If appeal is affirmed by the Area Director…notify the next level of appeal.
    - The decision of the Director, IHS constitutes final administrative action.

(ensure you use all of the applicable denial reasons)

Contract Health Service
Regulation Review & Interpretation

- **42 CFR §136.30** **(Subpart D)** **Payment to Medicare-participating hospitals for authorized Contract Health Services.** **(effective July 5, 2007)**
  - Limitation on charges for services furnished by Medicare-Participating hospitals to Indians.
  - Requires Medicare participating hospitals that provide inpatient hospital services to accept Medicare-Like Rates as **payment in full** when delivering services to CHS eligible patients who are referred to them by programs funded by the IHS.
  - MLR for IHS federal facilities is determined by the IHS Fiscal Intermediary, BC/BS of NM.
  - Tribal facilities may contract with the IHS FI or purchase their own software to calculate the MLR.

Contract Health Service
Regulation Review & Interpretation

- **42 CFR §136.61** **(Subpart G – Residual Status)** **Payor of last resort.**
  - The IHS is the payor of last resort for persons defined as eligible for CHS under the regulations in this part, not withstanding any State of local law or regulation to the contrary.
  - Accordingly the IHS will not be responsible for or authorize payment for CHS to the extent that:
    - The Indian is eligible for alternate resources
    - Would be eligible for AR under State or local law or regulation but for the Indian's eligible for CHS or other health services from the IHS or IHS funded programs.
  - Alternate Resources means health care resources other than those of the IHS. Such resources include…Medicaid, Medicare, state or local health care programs and private insurance.
  - **"Reasonable Inquiry"**

- Indian Health Manual
  - Part 2 – Services to Indians And Others
    - Chapter 3 – Contract Health Services
      - Consolidates the policy, procedures, and guidance for the effective management of the IHS, CHS Program. It is IHS policy to ensure CHS funds are used to supplement and complement other health care resources available to eligible AI/AN people.
    - **§136.3** – The service periodically issues administrative instructions to its officers and employees, which are primarily found tin the [IHS] Manual. These instructions are operating procedures to assist officers and employees in carrying out their responsibilities, and are not regulations establishing program requirements which are binding upon members of the general public.
    - **Exhibits** (Medical Priorities) and **Circulars** (Organ Transplant) are also found in the Indian Health Manual.

Contract Health Service
Regulation Review & Interpretation

- **Indian Health Manual (Part 2, Chapter 3, CHS),** continued
  - **2-3-5 PERSONS TO WHOM CHS WILL BE PROVIDED**
    - **Authority:** Title 42 CFR Part 136, is the appropriate citation for all correspondence to providers and patients. IHS chapter should not be cited for making decisions on eligibility or payment denials.
    - **Funds Available:** There is no authority to authorize payment for services under the CHS program unless funds are available.
  - **2-3-6 CONTRACT HEALTH SERVICE ELIGIBILITY REQUIREMENTS.**
    - An AI/AN claiming eligibility for CHS has the responsibility to furnish the CEO or the Tribal program with documentation to substantiate the claim.
      - Be eligible for Direct care as defined in 42 CFR 136.12, reside on reservation or within a CHSDA and maintain close economic and social ties.
      - Defines Students, Transients, Foster Children, etc.

Contract Health Service
Regulation Review & Interpretation

- **Indian Health Manual** **(Part 2, Chapter 3, CHS),** continued
  - **2-3-7 PRIORITIES**
    - Federal regulations permit the establishment of priorities based on relative medical need when funds are insufficient to provide the volume of CHS indicated as needed by the population residing in a CHSDA.
    - Area-wide priorities are established to ensure an equivalent level of services in al Service Units, taking into consideration the availability and accessibility of IHS or Tribal facilities, the population being served, etc.
    - Example of Aberdeen Area CHS Medical Priorities:
      - **I. Emergency – threat to life, limb and senses**
      - **II. Chronic primary and secondary care services**
      - **III. Preventive care**
      - **IV. Chronic care services**
      - **V. Excluded (cosmetic and experimental)**
    - **Medical Priorities are determined by providers**

- **Indian Health Manual** **(Part 2, Chapter 3, CHS),** continued
  - **2-3-8 PAYOR OF LAST RESORT REQUIREMENTS**
    - The AI/AN is eligible for alternate resources (AR).
    - The AI/AN would be eligible for the AR if he/she were to apply for them.
    - Would be eligible for the AR but for the AI/AN's eligibility for CHS.
  - Eligibility
    - **GUIDELINE:** Determine upon reasonable inquiry if the patient is potentially eligible for the AR. Advise the patient of the need to apply for the AR. Assist the patient in applying for the AR, especially where it is evident the patient is unable to apply or is having difficulty with the application process.
    - "**REASONABLE INQUIRY**": Ascertaining the patient's household size, income, and assets and applying AR standards to the patient's information,. **Only patients who are determined potentially eligible for AR are required to apply for such resources**.

- **Indian Health Manual** **(Part 2, Chapter 3, CHS),** continued
  - **2-3-9 AUTHORIZATION FOR CHS**
    - Notification Requirements. Prior approval or 72 hour notification for emergent/self referred care. 30 Days for elderly/disabled, defines elderly as 65 years of age (IHCIA).
    - Responsibility to Notify Indian Community of Requirements for Authorization. AI/AN affected by the CHS program must be kept aware of policies and requirements for approving, etc., including the title of the person(s) who must be notified when CHS is required.
      - This notification will include, at a minimum, publication in local community and/or Tribal newspapers and posting of notices on bulletin boards in public patient areas of IHS or Tribal facilities.

EXAMPLE OF NOTIFYING COMMUINTY OF REQUIREMENTS…

American Indian & Alaska Natives requesting an Indian Health Service (IHS) or Tribe*, Contract Health Service (CHS) program to pay for their referred or self-referred care must meet the requirements in 42 C.F.R 136.

*Tribes that contract with the federal government for the IHS's Contract Health Service function.

Basic CHS* Eligibility Requirements:

*Health services provided at the expense of the IHS or Tribe by other public or private providers.

- **Provide proof of enrollment in a federally recognized tribe, OR, proof that you descend from an enrolled member of a federally recognized tribe, and;**
- **Permanently reside on a reservation; OR, may reside outside of a reservation but within the CHS Delivery Area (CHSDA) of your tribe, and;**
- **Obtain prior approval; OR for self-referred care, notify your CHS program within 72 hours of receiving care** (30 days for elderly & disabled), **and;**
- **Services must be medically necessary.** (CHS is limited to services that are within your IHS or Tribal Health facility's established CHS Medical Priorities and/or funds available) **CHS funds may not be expended for services that are reasonably accessible and available at an IHS or Tribal Health facility, and;**
- **CHS will not be responsible for, or authorize payment of, services if the patient is eligible for *Alternate Resources*** (e.g., Medicaid). **As "*Payor of Last Resort*" CHS will only pay for authorized/approved care after all other Alternate Resources** (e.g., Medicare, Private Insurance) **have paid.**

These are the basic CHS requirements; **see 42 C.F.R.** (Code of Federal Regulation) **Part 136 to view the entire CHS eligibility requirements. For more information visit the IHS website at http://www.ihs.gov/NonMedicalPrograms/chs/, or contact your local CHS Program at:**

Contract Health Service
Regulation Review & Interpretation

- **Indian Health Manual** **(Part 2, Chapter 3, CHS),** continued
  - **OTHER SECTIONS OF THE CHS MANUAL:**
    - CHS Denials and Appeals
    - Management of CHS Funds. (Commitment Register, CHS Fund Status Report, follow up on authorizations, reconciling, etc.
    - Catastrophic Health Emergency Fund (CHEF)
    - Fiscal Intermediary
    - Medical Priorities and Deferred Services
    - CHS Committee
    - Federal Medical Care Recovery Act (FMCRA)
    - Victims of Crime Act

Contract Health Service
Regulation Review & Interpretation

- **Indian Health Care Improvement Act**
  - Permanently reauthorized on March 23, 2010 as part of the Patient Protection and Affordable Care Act. Now has no expiration date.
  - **Section 220**: **PROMPT ACTION ON PAYMENT OF CLAIMS**. The Service shall respond to a notification of a claim by a provider of the contract care service with either an individual purchase order or a denial of the claim within 5 working days after the receipt of such notification. If the Service fails to respond…shall accept as valid the claim submitted by the provider.
  - **Section 222**: **LIABILITY FOR PAYMENT**. A patient who receives contract care services that are authorized by the Service shall not be liable for the payment of any charges or costs associated with the provision of such services.
  - **Section 813**: **HEALTH SERVICES FOR INELIGIBLE PERSONS**. Any individual who has not attained 19 years of age, Is the natural or adopted child, step-child, foster-child, legal ward, or orphan of an eligible Indian, and is not otherwise eligible for health services provided by the service shall be eligible for all health services on same basis as eligible Indians unit such individual attains 19 years of age.
    - **Spouses of an eligible Indian who is not an Indian…shall be eligible if all of such spouses are made eligible, as a class by an appropriate resolution…of the Indian Tribe of the eligible Indian.**

Contract Health Service
Regulation Review & Interpretation

QUESTIONS?

Ed Chasing Hawk
Health System Specialist

Aberdeen Area Indian Health Service
Federal Building, Room 309
115 4th Avenue SE
Aberdeen, SD 57401
(605) 226-7575

Ed.ChasingHawk@ihs.gov