IHS COVID-19 Interim Guidance for Care Services to Non-Beneficiaries

Date Implemented: March 20, 2020

The purpose of this document is to highlight and clarify certain authorities that the Indian Health System may exercise in response to COVID-19. Through the enactment of various authorities, Congress anticipated that IHS would need to take extraordinary steps to prevent the spread of communicable diseases.

Specifically, the Indian Health Care Improvement Act provides in relevant part – "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 provision of law in order to…prevent the spread of a communicable disease or otherwise deal with a public health hazard…" 25 U.S.C. § 1680c(d)(2). This is in addition to the IHS's regulatory authority to "provide medically indicated services to non-Indian members of an eligible Indian's household if… necessary to control acute infectious disease or a public health hazard." 42 CFR 136.12. For further information regarding the regulatory authority under 42 CFR 136.12, please see the Indian Health Manual Part 2 Chapter 1, Eligibility for Services.

The statutory authority set out in 25 U.S.C. § 1680c(d)(2) does not *require* IHS to provide treatment to non-beneficiaries. Instead, it permits the IHS system to provide direct care services to non-beneficiaries in response to situations such as COVID-19. This authority may be utilized by Tribal Health Programs, should they wish to exercise the authority for their programs, assuming it is consistent with the terms of their Indian Self-Determination and Education Assistance Act agreement with IHS.

Until further notice, the decision to exercise this authority may be made at the local level. Each Area and IHS Service Unit may use this authority, at their discretion, to address COVID-19. In making this decision, the local levels of IHS should consider how best to contain the spread of COVID-19 in the Area. For example, such a plan might include testing and treatment for staff who are otherwise not eligible to receive services from IHS. Plans to implement these decisions should not interfere with or diminish the treatment of IHS beneficiaries.

Please note that the authority under 25 U.S.C. § 1680c(d)(2) relates to direct care services and does not extend to the Purchased/Referred Care (PRC) program. In order to receive services under PRC, the patient must be eligible for IHS direct care services and meet the eligibility requirements specific to PRC under 42 C.F.R. § 136.23. However, to the extent IHS is providing PRC services in support of direct care at an IHS facility, those services are available to all IHS beneficiaries receiving care there. They may be provided, as needed, to non-beneficiaries to prevent the spread of COVID-19.

In accordance with IHS authorities, alternate resources (private or state health insurance, etc.) should be charged for services provided to non-beneficiaries in accordance with 25 U.S.C. § 1621e. If there are no alternate resources, the Service Unit Director will determine whether the non-beneficiary is able to pay for or defray the cost of care directly. See 42 C.F.R. 136.14(b). These payment authorities apply when IHS is providing care under 25 U.S.C. § 1680c(d)(2) to prevent the spread of COVID-19.

This interim guidance is subject to change.
For the most recent version of this guidance and all IHS COVID-19 interim resources, please see:
https://www.ihs.gov/coronavirus/clinician-resources/