



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

42 CFR Part 136

[Docket No. IHS-FRDOC-0001]

RIN 0917-AA14

Removal of Obsolete Portion of Regulation Relating to Care and Treatment of Ineligible Individuals

AGENCY: Indian Health Service, Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Indian Health Service (IHS) of the Department of Health and Human Services (HHS or “the Department”) is issuing this Notice of Proposed Rulemaking (NPRM) to remove obsolete language appearing in the Code of Federal Regulations, regarding the rates charged for the provision of IHS services to ineligible individuals.

DATES: Comments due on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments to this proposed rule, identified by RIN 0917-AA14 by any of the following methods:

- *Federal eRulemaking Portal.* You may submit electronic comments at <http://www.regulations.gov> by searching for the Docket ID number IHS-FRDOC-0001. Follow the instructions <http://www.regulations.gov> online for submitting comments through this method.

• *Regular, Express, or Overnight Mail:* You may mail comments to Indian Health Service, Attention: Evonne Bennett, Acting Director, NPRM, RIN 0917-AA14, Division of Regulatory and Policy Coordination, Office of Management Services, Indian Health Service, 5600 Fishers Lane, Mailstop: 09E70, Rockville, Maryland 20857.

All comments received by the methods and due date specified above will be posted without change to content to <http://www.regulations.gov>, including any personal information provided about the commenter, and such posting may occur before or after the closing of the comment period.

Docket: For complete access to background documents or posted comments, go to <http://www.regulations.gov> and search for Docket ID number IHS-FRDOC-0001.

FOR FURTHER INFORMATION CONTACT: Evonne Bennett, Acting Director, Division of Regulatory and Policy Coordination, Office of Management Services, IHS, 5600 Fishers Lane, Rockville, MD 20857, Mail Stop: 09E70. Telephone (301) 443-1116 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: In response to Executive Order 13777, Sec. 3(d), which directs agencies to repeal existing regulations that are “outdated, unnecessary or ineffective” from the CFR, HHS proposes to remove outdated language appearing in the CFR at 42 CFR 136.14. The regulations in this part establish general principles and program requirements for carrying out Indian health programs. Regarding the provision of IHS services to ineligible individuals, § 136.14(b) provides that such individuals should be charged “rates approved by the Assistant Secretary for Health and

Surgeon General published in the *Federal Register*.” The Assistant Secretary for Health and the Surgeon General no longer approve or publish such rates. The Agency therefore proposes the removal of this unnecessary language. If the outdated language of § 136.14(b) were to be removed as proposed, § 136.14 in its entirety would read: “(a) In case of an emergency, as an act of humanity, individuals not eligible under § 136.12 may be provided temporary care and treatment in Service facilities; (b) Charging ineligible individuals. Where the Service Unit Director determines that an ineligible individual is able to defray the cost of care and treatment, the individual shall be charged. Reimbursement from third-party payors may be arranged by the patient or by the Service on behalf of the patient.”

Executive Orders 12866, 13563, 13771, and 13777

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives. Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action that is likely to result in a rule: (1) Having an annual effect on the economy of \$100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities (also referred to as “economically significant”); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set

forth in the Executive Order. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). HHS submits that this proposed rule is not “economically significant” as measured by the \$100 million threshold, and hence not a major rule under the Congressional Review Act. This rule has not been designated as a “significant regulatory action” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 13771, titled, “Reducing Regulation and Controlling Regulatory Costs,” was issued on January 30, 2017. Executive Order 13771 directs agencies to categorize all impacts which generate or alleviate costs associated with regulatory burden and to determine the actions net incremental effect. HHS identifies this proposed rule as a deregulatory action (removing an obsolete rule from the CFR) that provides no cost savings.

Executive Order 13777, titled, “Enforcing the Regulatory Reform Agenda,” was issued on February 24, 2017. As required by Section 3 of this Executive Order, HHS established a Regulatory Reform Task Force (HHS Task Force). Pursuant to Section 3(d)(ii), the HHS Task Force evaluated this rulemaking and determined that these regulations are “outdated, unnecessary, or ineffective.” Following this finding, the HHS Task Force advised IHS to initiate this rulemaking to remove the unnecessary regulation from the CFR.

Regulatory Flexibility Act

This action will not have a significant economic impact on Indian health programs. Therefore, the regulatory flexibility analysis provided for under the Regulatory Flexibility Act is not required.

Paperwork Reduction Act

This action does not affect any information collections.

List of Subjects in 42 CFR 136

Care and treatment of ineligible individuals.

For the reasons set forth above, the Department of Health and Human Services proposes to amend 42 CFR 136.14 as follows:

PART 136—INDIAN HEALTH

1. The authority citation for part 136 continues to read as follows:

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

2. Amend § 136.14 by revising paragraph (b) to read as follows:

§ 136.14 Care and treatment of ineligible individuals.

* * * * *

(b) Charging ineligible individuals. Where the Service Unit Director determines that an ineligible individual is able to defray the cost of care and treatment, the individual shall be charged. Reimbursement from third-party payors may be arranged by the patient or by the Service on behalf of the patient.

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Dated: March 13, 2020.

Michael D. Weahkee,

RADM, Assistant Surgeon General,

U.S. Public Health Service,

Principal Deputy Director,

Indian Health Service.

Approved: April 9, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

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