



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Notice of Proposed Purchased/Referred Care Delivery Area Redesignation for the Mid-Atlantic Tribes

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

ACTION: Notice.

SUMMARY: This Notice advises the public that the Indian Health Service (IHS) proposes to view the seven Mid-Atlantic Tribes in the Commonwealth of Virginia collectively and to expand the geographic boundaries of their current Purchased/Referred Care Delivery Areas (PRCDA). The seven Mid-Atlantic Tribes include the Pamunkey Indian Tribe, Chickahominy Indian Tribe, Chickahominy Indian Tribe – Eastern Division, Upper Mattaponi Tribe, Rappahannock Tribe, Monacan Indian Nation, and Nansemond Indian Tribe. The IHS previously designated a PRCDA for each of the seven Tribes, which include counties and/or independent cities in the Commonwealth of Virginia. The IHS is now proposing to expand those individual PRCDAs by creating a collective PRCDA for the seven Tribes. The collective PRCDA will include all of the counties and independent cities in each of the current PRCDAs, plus additional contiguous counties and independent cities in the Commonwealth of Virginia, the State of Maryland, and the State of North Carolina.

DATES: Comments must be submitted [INSERT DATE 30 DAYS AFTER PUBLICATION IN FEDERAL REGISTER]

ADDRESSES: In commenting, please refer to file code [Federal Register insert file code number]. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. You may submit comments in one of four ways (please choose only one of the ways listed):

1. Electronically. You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the “Submit a Comment” instructions.
2. By regular mail. You may mail written comments to the following address
ONLY:
Carl Mitchell, Director, Division of Regulatory and Policy Coordination
Indian Health Service
5600 Fishers Lane, Mail Stop: 09E70
Rockville, Maryland 20857
Please allow sufficient time for mailed comments to be received before the close of the comment period.
3. By express or overnight mail. You may send written comments to the above address.
4. By hand or courier. If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to the address above.
If you intend to deliver your comments to the Rockville address, please call telephone number (301) 443-1116 in advance to schedule your arrival with a staff member.

SUPPLEMENTARY INFORMATION: The current PRCDAs for the seven Mid-Atlantic Tribes are:

Pamunkey Indian Tribe—Caroline, Hanover, Henrico, King William, King and Queen, and New Kent Counties; and the independent city of Richmond in the Commonwealth of Virginia.

Chickahominy Indian Tribe—New Kent, James City, Charles City, and Henrico Counties in the Commonwealth of Virginia.

Chickahominy Indian Tribe—Eastern Division—New Kent, James City, Charles City, and Henrico Counties in the Commonwealth of Virginia.

Upper Mattaponi Tribe—Richmond, Middlesex, Essex, King and Queen, King William, New Kent, Hanover, Caroline, Henrico, Charles City, and James City Counties; and the independent city of Richmond in the Commonwealth of Virginia.

Rappahannock Tribe, Inc.—King and Queen, Caroline, Essex, and King William Counties in the Commonwealth of Virginia.

Monacan Indian Nation—Amherst, Nelson, Albemarle, Buckingham, Appomattox, Campbell, Bedford, Botetourt, Rockbridge, and Augusta Counties; and the independent cities of Lynchburg, Lexington, Buena Vista, Staunton, Waynesboro, and Charlottesville in the Commonwealth of Virginia.

Nansemond Indian Tribe—the independent cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, and Virginia Beach in the Commonwealth of Virginia.

The IHS is proposing to create a collective PRCDA for the seven Mid-Atlantic Tribes that will include the following counties and independent cities:

Counties in the Commonwealth of Virginia: Accomack, Albemarle, Alleghany, Amelia, Amherst, Appomattox, Arlington, Augusta, Bath, Bedford, Botetourt, Buckingham, Campbell, Caroline, Charlotte, Chesterfield, Clarke, Cumberland, Culpeper, Dinwiddie, Essex, Fauquier, Floyd, Fluvanna, Gloucester, Greene, Greensville, Goochland, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Mathews, Mecklenburg, Middlesex, Montgomery, Nelson, New Kent, Newport News, Norfolk, Nottoway, Orange, Page, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Pulaski, Richmond, Rockbridge, Rockingham, Southampton, Spotsylvania, Stafford, Warren, Westmoreland, and York.

Independent Cities in the Commonwealth of Virginia: Alexandria, Buena Vista, Charlottesville, Chesapeake, Colonial Heights, Covington, Emporia, Fairfax, Falls Church, Franklin, Fredericksburg, Hampton, Harrisonburg, Hopewell, Lexington, Lynchburg, Manassas, Manassas Park, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Radford, Richmond, Roanoke, Salem, Staunton, Suffolk, Virginia Beach, Waynesboro, and Williamsburg.

Counties in the State of Maryland: Allegany, Anne Arundel, Baltimore, Calvert, Carroll, Cecil, Charles, Frederick, Harford, Howard, Kent, Montgomery, Prince George's, Queen Anne's, St. Mary's, and Washington.

Independent Cities in the State of Maryland: Baltimore City.

Counties in the State of North Carolina: Alexander, Camden, Catawba, Chowan, Currituck, Davidson, Davie, Durham, Forsyth, Franklin, Gates, Granville, Guilford, Johnston, Orange, Pasquotank, Randolph, Rowan, Stanly, Stokes, and Wake.

Members of the seven Mid-Atlantic Tribes residing outside of the current PRCDA's are eligible for direct care services, however, they are not eligible for Purchased/Referred Care (PRC) services. The sole purpose of this expansion would be to authorize additional Tribal members and beneficiaries to receive PRC services.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment.

FOR FURTHER INFORMATION CONTACT: CAPT John Rael, Director, Office of Resource Access and Partnerships, Indian Health Service, 5600 Fishers Lane, Mail Stop: 10E85C, Rockville, Maryland 20857. Telephone (301) 443-0969. (This is not a toll free number).

BACKGROUND: The IHS provides services under regulations in effect as of

September 15, 1987, and republished at 42 CFR part 136, subparts A – C. Subpart C defines a Contract Health Service Delivery Area (CHSDA), now referred to as a PRCDA, as the geographic area within which PRC will be made available by the IHS to members of an identified Indian community who reside in the PRCDA. Residence within a PRCDA by a person who is within the scope of the Indian health program, as set forth in 42 CFR 136.12, creates no legal entitlement to PRC, but only potential eligibility for services. Services needed, but not available at an IHS/Tribal facility, are provided under the PRC program depending on the availability of funds, the relative medical priority of the services to be provided, and the actual availability and accessibility of alternate resources in accordance with the regulations.

The regulations at 42 CFR part 136, subpart C provide that, unless otherwise designated, a PRCDA 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 - 42 CFR 136.22(a)(6). The regulations also provide that after consultation with the Tribal governing body or bodies on those reservations included within the PRCDA, the Secretary may from time to time, redesignate areas within the United States for inclusion in or exclusion from a PRCDA - 42 CFR 136.22(b). The regulations require that certain criteria must be considered before any redesignation is made. The criteria are as follows:

- (1) The number of Indians residing in the area proposed to be so included or excluded;
- (2) Whether the Tribal governing body has determined that Indians residing in the area near the reservation are socially and economically affiliated with the Tribe;
- (3) The geographic proximity to the reservation of the area whose inclusion or exclusion is being considered; and
- (4) The level of funding which would be available for the provision of PRC.

Additionally, the regulations require that any redesignation of a PRCDA must be made in accordance with the procedures of the Administrative Procedure Act (5 U.S.C. 553) - 42 CFR 136.22(c). In compliance with this requirement, the IHS is publishing this Notice and requesting public comments.

The Pamunkey Indian Tribe was the first federally recognized Tribe in the Commonwealth of Virginia, recognized through the Department of the Interior's Federal Acknowledgement of American Indian Tribes administrative process effective January 28, 2016. The Pamunkey Indian Tribe does not have a reservation land base within the meaning of 42 CFR 136.22(a)(6). As a result, the Director, IHS, exercised reasonable administrative discretion to designate a PRCDA for the Pamunkey Indian Tribe, effective August 28, 2017, 82 FR 35227.

On January 29, 2018, the President signed into law H.R. 984, the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017," which provided Federal recognition to six additional Tribes in the Commonwealth of Virginia, and identified geographical (e.g., county or city) service delivery areas for each. These service delivery areas included overlapping areas for many of the Tribes, and also overlapped the Pamunkey Indian Tribe's designated PRCDA. The IHS designated the PRCDA for each of these six Tribes, effective February 21, 2020, in accordance with Congressional intent. The IHS has historically established PRCDA in accordance with Congressional intent while preserving regulatory flexibility to re-designate areas as appropriate for inclusion in or exclusion from a PRCDA under PRC regulations. Expansion of the PRCDA for the seven Mid-Atlantic Tribes would extend these already existing and overlapping PRCDA, to create a collective PRCDA for these seven Tribes, for the sole purpose of authorizing additional Tribal members and beneficiaries to receive PRC services. Representatives from all seven Mid-Atlantic Tribes unanimously sought to move forward collectively to request re-designation of their PRCDA to include the entire

Commonwealth of Virginia. Following consultation with those Tribes, the IHS also considered portions of Maryland and North Carolina that are close to the border of Virginia. Since all seven of the Mid-Atlantic Tribes requested the same PRCDA, the IHS is proposing to consider these Tribes collectively for purposes of the PRCDA expansions. This includes considering their Tribal members collectively under the criteria set forth in 42 CFR 136.22(b), as described above. In doing so, the IHS has determined which portions of the Commonwealth of Virginia, Maryland, and North Carolina would meet the necessary criteria for one or more of the seven Mid-Atlantic Tribes. For example, the IHS is not proposing to add any counties where no members of any Mid-Atlantic Tribe reside, or counties that are not contiguous with the existing or proposed PRCDA.

Accordingly, the IHS proposes to expand the individual PRCDA for these seven Mid-Atlantic Tribes to create a collective PRCDA that includes sixty-six (66) counties and thirty-two (32) independent cities in the Commonwealth of Virginia; twenty-one (21) counties in North Carolina; and sixteen (16) counties and one (1) independent city in Maryland.

Under 42 CFR 136.23, those otherwise eligible Indians who do not reside on a reservation, but reside within a PRCDA, must be either members of the Tribe or other IHS beneficiaries who maintain close economic and social ties with the Tribe. In this case, applying the aforementioned PRCDA redesignation criteria required by operative regulations codified at 42 CFR part 136, subpart C, the following findings are made:

1. By expanding each Tribe's PRCDA and creating one collective PRCDA, the seven Mid-Atlantic Tribes estimate the current eligible population will collectively increase by 1006 individuals.
2. The seven Mid-Atlantic Tribes have determined that these 1006 individuals are members of the federally recognized Tribes in the Commonwealth of Virginia and

that these members are socially and economically affiliated with these Mid-Atlantic Tribes.

3. The existing PRCDA for these seven Mid-Atlantic Tribes, consisting of twenty-one (21) counties and fourteen (14) independent cities collectively, will be expanded to include sixty-six (66) counties and thirty-two (32) independent cities in the Commonwealth of Virginia; twenty-one (21) counties in North Carolina; and sixteen (16) counties, and one (1) independent city in Maryland. Members of one or more of the Tribes reside in each county that is included in the proposed expansion, and those members live near enough to their Tribe's seat of government to maintain close social and economic ties with their Tribe.

According to the leadership for each of the Tribes, those members live close enough to regularly participate in-person in Tribal affairs, events, activities, or other functions held by or carried out by the Tribe within its current PRCDA.

Furthermore, the proposed counties and independent cities form a contiguous area with the existing PRCDA. Considering the Tribes collectively, the IHS has determined the additional counties and independent cities proposed for inclusion herein to be geographically proximate, meaning "on or near," to the area analogous to reservations for the seven Mid-Atlantic Tribes.

4. PRC programs operated by/for the seven Mid-Atlantic Tribes will use their existing Federal allocation for PRC funds to provide services to the expanded population. No additional financial resources will be allocated by the IHS to these programs to provide services to members residing in the expanded counties and independent cities in the Commonwealth of Virginia, State of Maryland, or State of North Carolina.

This Notice does not contain reporting or recordkeeping requirements subject to prior approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Roselyn Tso,
Director,
Indian Health Service.

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