Tuesday
December 16, 1980

Part III

Department of Health and Human Services
Public Health Service

Indian Health; Persons To Whom Services Will Be Provided

File - IHS Eligibility
Eligibility for Services

December 16, 1980

Regulation Expanding IHS Eligibility to None Natives
DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 36

Indian Health; Persons To Whom Services Will Be Provided

AGENCY: Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes two changes in current regulations (42 CFR 35.12(c)) governing who will be considered eligible for services from the Indian Health Service (IHS) —

1. A "common sense" revision of format;
2. A substantive change in the eligibility of non-Indians for health services. This latter change would expand eligibility to include the non-Indian spouse (husband or wife) of an eligible Indian residing in the Indian's household instead of only the non-Indian wife. In addition, the proposal would include in limited cases other non-Indians residing in the household of an eligible Indian, and the non-Indian surviving spouse who continues to live in the Indian community and does not remarry an ineligible person.

DATES: Comments on the proposed rule must be received on or before February 17, 1981. In addition, public meetings will be held in each of the IHS areas at which the public will be invited to express their views. These public meetings will be advertised locally and held during the period from the date of publication of this notice to February 17, 1981.

ADDRESS: Address written comments to: Mr. Richard J. McCloskey, Indian Health Service, Room 6A-20, 5600 Fishers Lane, Rockville, Maryland 20857. Comments will be available for public inspection at this address from 8:30 a.m. to 5:00 p.m. beginning approximately 2 weeks after publication of this notice. The public meetings will be held at times and locations which will be announced by the local IHS Area or Program Office.

FOR FURTHER INFORMATION CONTACT: Richard J. McCloskey, Indian Health Service, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-1116.

SUPPLEMENTARY INFORMATION: Except in emergencies or by special statutory provision, non-Indians may be served by the IHS only as an adjunct to carrying out the statutory authority to conserve the health of Indians [25 USC 13 (Snyder Act) and 42 USC 2001 (Transfer Act)].

Serving non-Indians under this authority is justified in those situations where the health of the non-Indian is so closely interrelated with the health of Indian persons that serving the non-Indian may be reasonably viewed as furthering the statutory purpose of conserving the health of Indians.

The current regulation published in 1956 extends eligibility to the non-Indian wife of an eligible Indian on the basis that her health is integral to the health of the rest of the family. In addition, an IHS manual provision specifies that non-Indian dependent members of an Indian's household are eligible for services. In practice, the IHS has served non-Indian stepchildren and adopted children of an eligible Indian under that provision.

The proposed amendment would update the regulation to eliminate discrimination based on sex and to include certain members of an eligible Indian's household. Under the proposal, the non-Indian spouse (husband or wife) of an eligible Indian residing in the Indian's household will be considered eligible. Also, under the proposal other non-Indians members of the Indian's immediate family who are residing with the Indian—that is stepchildren, adopted children, and the separated or divorced parent in the case of an Indian child—would be served because their health may be presumed closely related to the health of the Indian(s) in the family. Serving them may be reasonably viewed as furthering the statutory purpose of conserving the health of Indians.

Beyond the immediate family (mother, father and children), the proposed regulation does not attempt to specify other non-Indians residing in an eligible Indian's household who will be considered eligible. Instead the proposed regulation requires that the IHS medical officer in charge will determine if providing services to the non-Indian is necessary to conserving the health of Indians in that household. For example, the medical officer in charge might determine that serving a non-Indian will prevent the spread of communicable disease in the household or that serving a non-Indian may be essential to maintaining adequate child care in the household.

We do not propose using financial dependency as the criteria for eligibility. The IHS Manual (§ 2-1.2) in describing persons to whom services may be provided refers to non-Indian dependents of an eligible Indian residing in the Indian's household, but in practice this has meant only stepchildren and adopted children. No financial dependency test has been applied; nor would it be administratively feasible for the IHS to adopt such a test.

The proposed amendment also specifically extends eligibility for services to the non-Indian surviving spouse of an eligible Indian who continues to live in the Indian community served and who has not remarried an ineligible person. This is in accord with a longstanding IHS practice to interpret the term "non-Indian wives" in the current regulation as including surviving wives in the above circumstances. Once again, we believe that there is a sufficient connection between the proposed policy and the statutory purpose of conserving the health of the Indians.

The proposed amendment also constitutes a "common sense" revision of the format of 42 CFR 35.12 as part of the Department of Health and Human Services (HHS) response to Executive Order No. 12044, "Improving Government Regulations." The IHS program is known as "Operation Common Sense" and has the goal of improving the clarity of the language used in regulations. No substantive change with respect to the eligibility of Indians for IHS services is made or intended.

Pending issuance of final regulations, the IHS will consider the non-Indian husband of an eligible Indian residing with the Indian as eligible for services despite exclusion of non-Indian husbands under the current regulation. This course of action will avoid discrimination based on sex pending issuance of a final rule.

The Office of Management and Budget (OMB) Circular A-94, Evaluation, Review, and Coordination of Federal and Federally Assisted Programs and Projects, is not applicable to this notice.

Dated: October 30, 1980.

Julius B. Nickmood,
Assistant Secretary for Health.

Approved: December 8, 1980.

Patricia Roberts Harris,
Secretary.

Title 42, Subpart B, Part 35, paragraphs (a) § 35.12. Code of Federal Regulations is revised to read as follows:

§ 35.12 Person to whom services will be provided.

(c) Eligibility. (1) You are eligible for available services, as medically indicated, if you are of Indian descent and belong to the Indian community served by the local facilities and program.

(1) Generally, an individual may be regarded as within the scope of the Indian health and medical service
program if he/she is regarded as an Indian by the community in which he/she lives as evidenced by such factors as: tribal membership, enrollment, residence on tax-exempt land, ownership of restricted property; active participation in tribal affairs; or other relevant factors in keeping with general Bureau of Indian Affairs practices in the jurisdiction.

(ii) In case of doubt as to whether an individual applying for care is within the scope of the program, the Medical Officer in Charge shall obtain from the appropriate Bureau of Indian Affairs officials in the jurisdiction information pertinent to his determination of the individual's continuing relationship to the Indian population group served by the local program.

(2) You are eligible for available services, as medically indicated, if you are (a) the non-Indian spouse of an eligible Indian and reside in the household of that eligible Indian; or (b) you are a non-Indian member of an eligible Indian's immediate family and reside in the household of that eligible Indian; or (c) you are the surviving non-Indian spouse of an eligible Indian and you continue to live in the community served by the local facilities and program and have not remarried a non-eligible individual.

(3) You may be eligible for available services, as medically indicated if you are a non-Indian residing in an eligible Indian's household and a medical determination is made by the Medical Officer in Charge that providing necessary services to you will aid in conserving the health of Indian(s) in that household. The determination will be a professional judgment based upon the individual circumstances of each case.

(b) Emergency situations. If the applicant's condition is such that immediate care and treatment are necessary, services shall be provided pending determination of eligibility.

(c) Priorities for care and treatment among eligible individuals within the scope of the program. When funds, facilities, or personnel are insufficient to provide the indicated volume of services, priorities for care and treatment between eligible individuals will be determined on the basis of:

(1) Their relative medical need, and;
(2) Their access to other arrangements for obtaining the necessary care.

FILE 12-26-93 \ 12-26-93 Filed 12-27-93 FR 6-34