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ACA Exemptions: What AI/ANs Need to Know Right Now and Why It's Important

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Washington, DC

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Indian Specific Protections in Patient Protection and Affordable Care Act

Special Enrollment – Sec. 1311(c)(6)(d). Exchange plans must provide Indians with special monthly enrollment periods

Cost Sharing Protections under Exchange Plans – Sec. 1402(d) and 2901(a);

- Indians under 300% of poverty, enrolled in any Exchange plan, are exempt from cost sharing (25 U.S.C. § 1623(a))
- No cost sharing for services provided by I/T/U and no deduction in payments to I/T/U

Tax Penalty Exemption – ACA Sec. 1411(b)(5)(A) (42 USC 18081) and ACA Sec. 1501(e)(3) (26 USC 5000A(e)(3)). Indians exempt from tax penalty for failure to maintain minimum essential coverage



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But, Who Is an Indian under the ACA?

“The term “Indian tribe” means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status of Indians.”

IRC Sec. 45A(c)(6) only

IHCIA Sec. 4(14), ISDEAA Sec. 4(d), AND IRC Sec. 45A(c)(6)

IHCIA Sec. 4(14) only

“Indian” means a person who is a member of an Indian tribe (includes Alaska Natives). See, definitions above, 42 CFR 36 (IHS Eligibility Regulations) and 42 CFR 447.50 (CMS implementation of ARRA cost sharing protections)



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Are There Still Issues? Of Course!

WHO IS AN “INDIAN”?

HHS/CMS and IRS have agreed the statutory references have the same meaning, but they have concluded that only members of Federally recognized Tribes and Alaska Native Claims Settlement Act Corporations are “Indian”

But, What About Other Indians Who Are Eligible for Services from the Indian Health Service?

For Medicaid purposes, all AI/ANs that IHS services are “Indian”.

Since Medicaid is one of the more important benefits that is important.



For Purposes of the Medicaid Program, How Does CMS Defines “Indian”? 42 CFR 447.51 (formerly .50)

“*Indian* means any individual defined at 25 USC 1603(13), 1603(28), or 1679(a), or who has been determined eligible as an Indian, under 42 CFR § 136.12. This means the individual:

- (1) Is a member of a Federally-recognized tribe;
- (2) Resides in an urban center and meets one or more of the following four criteria:
 - (i) Is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendent, in the first or second degree, of any such member;
 - (ii) Is an Eskimo or Aleut or other Alaska Native;
 - (iii) Is considered by the Secretary of the Interior to be an Indian for any purpose; or
 - (iv) Is considered to be an Indian under regulations promulgated by the Secretary;
- (3) Is considered by the Secretary of the Interior to be an Indian for any purpose; or
- (4) Is considered by the Secretary of Health and Human Services to be an Indian for purposes of eligibility for Indian health care services , including as a California Indian, Eskimo, Aleut, or other Alaska Native.

OK, But, What Does This Really Mean to Me and My Family?

If you plan to enroll in a Qualified Health Plan (QHP) under the ACA, you will need to establish that you are an “Indian” so that you are permitted to enroll at any time of the year and make use of the cost sharing protections.

Even if you don’t plan to enroll in a QHP and don’t have other qualifying insurance, sometime before April 2015, you should apply for an Indian exemption from the personal responsibility payment obligation (tax penalty).

There are two different exemptions:

- (1) “Member of an Indian Tribe” exemption for people who meet the ACA definition of Indian;
- (2) Indian Hardship exemption for other Indians and their family members.

So, How Do I Get an Exemption?

There are two different exemptions, but only one application form. You can find it online:

<http://marketplace.cms.gov/getofficialresources/publications-and-articles/tribal-exemption.pdf>

Be sure to look at the instructions:

<http://marketplace.cms.gov/getofficialresources/publications-and-articles/exemption-application-instructions.pdf>

If You Are a Member of an Indian Tribe (including ANCSA Corporations)

Answer “yes” to Question 7 and skip the rest of the page.

Documentation must be provided:

**Egs. Tribal enrollment card or letter
CDIB if it includes enrollment information
proof of shareholder status in an Alaska Native
Claims Settlement Act Regional or Village
Corporation**

**Be sure to keep copies. Be sure to check that the exemption
you receive says you are exempt as an Indian. This is a
lifetime exemption.**

But, What If You Are Eligible For IHS, Even Though You Aren't an Enrolled Member of a Tribe?

Indian Hardship Exemptions are available to:

Individuals of Indian descent belonging to the Indian community served by the local facilities and program of the Indian Health Service are eligible for services. An individual may be regarded as within the scope of the Indian Health Service program if he or she is regarded as an Indian by the community in which he or she lives as seen 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. Eligibility based on one's status as a California Indian, Eskimo, Aleut, or other Alaska Native is included within this framework.

— Non-Indians

Additionally, the following non-Indians are eligible for services from the Indian Health Service:

- (A) A child under the age of 19 who is the natural child, adopted child, stepchild, foster child, legal ward, or orphan of an eligible Indian,
- (B) Spouses of an eligible Indian, if the tribe passed a tribal resolution that makes spouses eligible to receive services from the Indian Health Service, or
- (C) Non-Indian women who are pregnant with the child of an eligible Indian.

Documentation of Hardship Exemption

For an Indian who is not a member of a tribe:

Evidence that you are eligible to receive Indian health services.

For a non-Indian:

Proof of the relationship to an IHS eligible Indian

Eg. Birth certificate

Proof of pregnancy and paternity by an Indian father

Proof of marriage & that tribe has authorized services to non-Indian spouses

Notes/Questions



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Presenter

Myra M. Munson is a partner in the Juneau office of Sonosky, Chambers, Sachse, Miller & Munson LLP, which specializes in representing tribal interests in Alaska and throughout the United States. She earned her bachelor's degree from the University of Alaska Fairbanks in 1972 and her law degree and master's degree in social work with honors from the University of Denver in 1980. After serving as Alaska Commissioner of Health and Social Services from 1986 to 1990, Ms. Munson joined the Sonosky Law Firm LLP where her practice has emphasized self-determination and self-governance, the Indian Health Care Improvement Act (IHCA), Medicaid and other third-party reimbursement issues, and other health program operations issues. She was a technical advisor to the IHCA National Steering Committee for over 10 years; assisted in drafting and editing substantial sections of the reauthorization; and testified before the Senate Committee on Indian Affairs. Ms. Munson is also a member of the National Indian Health Board Medicare & Medicaid Policy Committee, and a technical advisor to the Centers for Medicare and Medicaid Services Tribal Technical Advisory Group. She has been conducting extensive training on the Affordable Care Act and IHCA since their passage and serves as a consultant to the National Indian Health Board with regard to training on and implementation of these new laws. In 2003, Ms. Munson was given the Denali Award by the Alaska Federation of Natives. and in 2009 the Healthy Alaska Native Foundation awarded her with its President's Award.



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