

Showing Current Law as Amended by H.R. 5406

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Section 108 of the Indian Health Care Improvement Act (25 U.S.C. 1616a)

§1616a. Indian Health Service Loan Repayment Program

(a) Establishment

(1) The Secretary, acting through the Service, shall establish a program to be known as the Indian Health Service Loan Repayment Program (hereinafter referred to as the "Loan Repayment Program") in order to assure an adequate supply of trained health professionals necessary to maintain accreditation of, and provide health care services to Indians through, Indian health programs.

(2) For the purposes of this section-

(A) the term "Indian health program" means any health program or facility funded, in whole or part, by the Service for the benefit of Indians and administered-

(i) directly by the Service;

(ii) by any Indian tribe or tribal or Indian organization pursuant to a contract under-

(I) the Indian Self-Determination Act [25 U.S.C. 450f et seq.], or

(II) section 23 of the Act of April 30, 1908 ¹ (25 U.S.C. 47), popularly known as the "Buy-Indian" Act; or

(iii) by an urban Indian organization pursuant to subchapter IV of this chapter; and

(B) the term "State" has the same meaning given such term in section 254d(i)(4) ¹ of title 42.

(b) Eligibility

To be eligible to participate in the Loan Repayment Program, an individual must-

(1)(A) be enrolled-

(i) in a course of study or program in an accredited institution, as determined by the Secretary, within any State and be scheduled to complete such course of study in the same year such individual applies to participate in such program (including a degree business administration with an emphasis in health care management, a defined by the Secretary, or a degree in health administration, hospital administration, or public health); or

(ii) in an approved graduate training program in a health profession or a license or certification to practice in the field of health administration, hospital administration, business administration, or public health, as applicable in a State; or

(B) have-

(i) a degree in a health profession; and

(ii) a license to practice a health profession in a State;

(2)(A) be eligible for, or hold, an appointment as a commissioned officer in the Regular or Reserve Corps of the Public Health Service;

(B) be eligible for selection for civilian service in the Regular or Reserve Corps of the Public Health Service;

(C) meet the professional standards for civil service employment in the Indian Health Service; or

(D) be employed in an Indian health program without a service obligation; and

(3) submit to the Secretary an application for a contract described in subsection (f).

(c) Application and contract forms

(1) In disseminating application forms and contract forms to individuals desiring to participate in the Loan Repayment Program, the Secretary shall include with such forms a fair summary of the rights and liabilities of an individual whose application is approved (and whose contract is accepted) by the Secretary, including in the summary a clear explanation of the damages to which the United States is entitled under subsection (l) in the case of the individual's breach of the contract. The Secretary shall provide such individuals with sufficient information regarding the advantages and disadvantages of service as a commissioned officer in the Regular or Reserve Corps of the Public Health Service or a civilian employee of the Indian Health Service to enable the individual to make a decision on an informed basis.

(2) The application form, contract form, and all other information furnished by the Secretary under this section shall be written in a manner calculated to be understood by the average individual applying to participate in the Loan Repayment Program.

(3) The Secretary shall make such application forms, contract forms, and other information available to individuals desiring to participate in the Loan Repayment Program on a date sufficiently early to ensure that such individuals have adequate time to carefully review and evaluate such forms and information.

(d) Vacancies; priority

(1) Consistent with paragraph (3), the Secretary, acting through the Service and in accordance with subsection (k), shall annually-

(A) identify the positions in each Indian health program for which there is a need or a vacancy, and

(B) rank those positions in order of priority.

(2) Consistent with the priority determined under paragraph (1), the Secretary, in determining which applications under the Loan Repayment Program to approve (and which contracts to accept), shall give priority to applications made by-

(A) Indians; and

(B) individuals recruited through the efforts of Indian tribes or tribal or Indian organizations.

(3)(A) Subject to subparagraph (B), of the total amounts appropriated for each of the fiscal years 1993, 1994, and 1995 for loan repayment contracts under this section, the Secretary shall provide that-

(i) not less than 25 percent be provided to applicants who are nurses, nurse practitioners, or nurse midwives; and

(ii) not less than 10 percent be provided to applicants who are mental health professionals (other than applicants described in clause (i)).

(B) The requirements specified in clause (i) or clause (ii) of subparagraph (A) shall not apply if the Secretary does not receive the number of applications from the individuals described in clause (i) or clause (ii), respectively, necessary to meet such requirements.

(e) Approval

(1) An individual becomes a participant in the Loan Repayment Program only upon the Secretary and the individual entering into a written contract described in subsection (f).

(2) The Secretary shall provide written notice to an individual promptly on-

(A) the Secretary's approving, under paragraph (1), of the individual's participation in the Loan Repayment Program, including extensions resulting in an aggregate period of obligated service in excess of 4 years; or

(B) the Secretary's disapproving an individual's participation in such Program.

(f) Contract terms

The written contract referred to in this section between the Secretary and an individual shall contain-

(1) an agreement under which-

(A) subject to paragraph (3), the Secretary agrees-

(i) to pay loans on behalf of the individual in accordance with the provisions of this section, and

(ii) to accept (subject to the availability of appropriated funds for carrying out this section) the individual into the Service or place the individual with a tribe or Indian organization as provided in subparagraph (B)(iii), and

(B) subject to paragraph (3), the individual agrees-

(i) to accept loan payments on behalf of the individual;

(ii) in the case of an individual described in subsection (b)(1)-

(I) to maintain enrollment in a course of study or training described in subsection (b)(1)(A) until the individual completes the course of study or training, and

(II) while enrolled in such course of study or training, to maintain an acceptable level of academic standing (as determined under regulations of the Secretary by the educational institution offering such course of study or training);

(iii) to serve for a time period (hereinafter in this section referred to as the "period of obligated service") equal to 2 years or such longer period as the individual may agree to serve in the full-time practice of such individual's profession (or 4 years or such longer period as the individual may agree to serve in the half-time practice of the individual's profession) [full-time clinical practice of such individual's profession] in an Indian health program to which the individual may be assigned by the Secretary;

(2) a provision permitting the Secretary to extend for such longer additional periods, as the individual may agree to, the period of obligated service agreed to by the individual under paragraph (1)(B)(iii);

(3) a provision that any financial obligation of the United States arising out of a contract entered into under this section and any obligation of the individual which is conditioned thereon is contingent upon funds being appropriated for loan repayments under this section;

(4) a statement of the damages to which the United States is entitled under subsection (I) for the individual's breach of the contract; and

(5) such other statements of the rights and liabilities of the Secretary and of the individual, not inconsistent with this section.

(g) Loan repayment purposes; maximum amount; tax liability reimbursement; schedule of payments

(1) A loan repayment provided for an individual under a written contract under the Loan Repayment Program shall consist of payment, in accordance with paragraph (2), on behalf of the individual of the principal, interest, and related expenses on government and commercial loans received by the individual regarding the undergraduate or graduate education of the individual (or both), which loans were made for-

(A) tuition expenses;

(B) all other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the individual; and

(C) reasonable living expenses as determined by the Secretary.

(2)(A) For each year of obligated service that an individual contracts to serve under subsection (f) the Secretary may pay, in the case of an individual agreeing to serve in the full-time practice of the individual's profession, up to \$35,000 (or an amount equal to the amount specified in section 254I-1(g)(2)(A) of title 42) (or in the case of an individual agreeing to serve in the half-time practice of such individual's profession, up to \$17,500) on behalf of the individual for loans described in paragraph (1). In making a determination of the amount to pay for a year of such service by an individual, the Secretary shall consider the extent to which each such determination-

(i) affects the ability of the Secretary to maximize the number of contracts that can be provided under the Loan Repayment Program from the amounts appropriated for such contracts;

(ii) provides an incentive to serve in Indian health programs with the greatest shortages of health professionals; and

(iii) provides an incentive with respect to the health professional involved remaining in an Indian health program with such a health professional shortage, and continuing to provide primary health services, after the completion of the period of obligated service under the Loan Repayment Program.

(B) Any arrangement made by the Secretary for the making of loan repayments in accordance with this subsection shall provide that any repayments for a year of obligated service shall be made no later than the end of the fiscal year in which the individual completes such year of service.

(3) For the purpose of providing reimbursements for tax liability resulting from payments under paragraph (2) on behalf of an individual, the Secretary-

(A) in addition to such payments, may make payments to the individual in an amount not less than 20 percent and not more than 39 percent of the total amount of loan repayments made for the taxable year involved; and

(B) may make such additional payments as the Secretary determines to be appropriate with respect to such purpose.

(4) The Secretary may enter into an agreement with the holder of any loan for which payments are made under the Loan Repayment Program to establish a schedule for the making of such payments.

(h) Effect on employment ceiling of Department of Health and Human Services

Notwithstanding any other provision of law, individuals who have entered into written contracts with the Secretary under this section, while undergoing academic training, shall not be counted against any employment ceiling affecting the Department of Health and Human Services.

(i) Recruiting programs

The Secretary shall conduct recruiting programs for the Loan Repayment Program and other health professional programs of the Service at educational institutions training health professionals or specialists identified in subsection (a).

(j) Prohibition of assignment to other government departments

Section 215 of title 42 shall not apply to individuals during their period of obligated service under the Loan Repayment Program.

(k) Staff needs of health programs administered by Indian tribes

The Secretary, in assigning individuals to serve in Indian health programs pursuant to contracts entered into under this section, shall-

(1) ensure that the staffing needs of Indian health programs administered by an Indian tribe or tribal or health organization receive consideration on an equal basis with programs that are administered directly by the Service; and

(2) give priority to assigning individuals to Indian health programs that have a need for health professionals to provide health care services as a result of individuals having breached contracts entered into under this section.

(l) Voluntary termination of study or dismissal from educational institution; collection of damages

(1) An individual who has entered into a written contract with the Secretary under this section and who-

(A) is enrolled in the final year of a course of study and who-

(i) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary);

(ii) voluntarily terminates such enrollment; or

(iii) is dismissed from such educational institution before completion of such course of study; or

(B) is enrolled in a graduate training program, fails to complete such training program, and does not receive a waiver from the Secretary under subsection (b)(1)(B)(ii), shall be liable, in lieu of any service obligation arising under such contract, to the United States for the amount which has been paid on such individual's behalf under the contract.

(2) If, for any reason not specified in paragraph (1), an individual breaches his written contract under this section by failing either to begin, or complete, such individual's period of obligated service in accordance with subsection (f), the United States shall be entitled to recover from such individual an amount to be determined in accordance with the following formula:

$$A=3Z(t-s/t)$$

in which-

(A) "A" is the amount the United States is entitled to recover;

(B) "Z" is the sum of the amounts paid under this section to, or on behalf of, the individual and the interest on such amounts which would be payable if, at the time the amounts were paid, they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States;

(C) "t" is the total number of months in the individual's period of obligated service in accordance with subsection (f); and

(D) "s" is the number of months of such period served by such individual in accordance with this section.

Amounts not paid within such period shall be subject to collection through deductions in Medicare payments pursuant to [section 1395ccc of title 42](#).

(3)(A) Any amount of damages which the United States is entitled to recover under this subsection shall be paid to the United States within the 1-year period beginning on the date of the breach or such longer period beginning on such date as shall be specified by the Secretary.

(B) If damages described in subparagraph (A) are delinquent for 3 months, the Secretary shall, for the purpose of recovering such damages-

(i) utilize collection agencies contracted with by the Administrator of the General Services Administration; or

(ii) enter into contracts for the recovery of such damages with collection agencies selected by the Secretary.

(C) Each contract for recovering damages pursuant to this subsection shall provide that the contractor will, not less than once each 6 months, submit to the Secretary a status report on the success of the contractor in collecting such damages. [Section 3718 of title 31](#) shall apply to any such contract to the extent not inconsistent with this subsection.

(m) Cancellation or waiver of obligations; bankruptcy discharge

(1) Any obligation of an individual under the Loan Repayment Program for service or payment of damages shall be canceled upon the death of the individual.

(2) The Secretary shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment by an individual under the Loan Repayment Program whenever compliance by the individual is impossible or would involve extreme hardship to the

individual and if enforcement of such obligation with respect to any individual would be unconscionable.

(3) The Secretary may waive, in whole or in part, the rights of the United States to recover amounts under this section in any case of extreme hardship or other good cause shown, as determined by the Secretary.

(4) Any obligation of an individual under the Loan Repayment Program for payment of damages may be released by a discharge in bankruptcy under title 11 only if such discharge is granted after the expiration of the 5-year period beginning on the first date that payment of such damages is required, and only if the bankruptcy court finds that nondischarge of the obligation would be unconscionable.

(n) Annual report

The Secretary shall submit to the President, for inclusion in each report required to be submitted to the Congress under [section 1671 of this title](#), a report concerning the previous fiscal year which sets forth-

(1) the health professional positions maintained by the Service or by tribal or Indian organizations for which recruitment or retention is difficult;

(2) the number of Loan Repayment Program applications filed with respect to each type of health profession;

(3) the number of contracts described in subsection (f) that are entered into with respect to each health profession;

(4) the amount of loan payments made under this section, in total and by health profession;

(5) the number of scholarship grants that are provided under [section 1613a of this title](#) with respect to each health profession;

(6) the amount of scholarship grants provided under [section 1613a of this title](#), in total and by health profession;

(7) the number of providers of health care that will be needed by Indian health programs, by location and profession, during the three fiscal years beginning after the date the report is filed; and

(8) the measures the Secretary plans to take to fill the health professional positions maintained by the Service or by tribes or tribal or Indian organizations for which recruitment or retention is difficult.

Title I of the Indian Health Care Improvement Act (25 U.S.C. 1611 et seq.)

SUBCHAPTER I-INDIAN HEALTH PROFESSIONAL PERSONNEL

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SEC. 125. CULTURAL COMPETENCY PROGRAMS.

(a) In General- The Secretary, acting through the Service, shall, not later than one year after the date of the enactment of this section and for each Service area, develop and implement training programs for cultural competency for

employees of the Service, locum tenens medical providers, and other contracted employees who work at Service hospitals or other Service facilities and whose employment requires regular direct patient access.

(b) Required Participation- Notwithstanding any other provision of law, beginning with years beginning after (and for contracts entered into on or after) the date of implementation of the training programs under subsection (a), annual participation in such a program shall be a condition of employment (or of providing services in the capacity as a locum tenen medical provider or of the terms of the contracted employment, as applicable), and continued employment (or provision of such services in such capacity or contracted employment, as applicable), for each employee of the Service, locum tenens medical provider, and contracted employee described in such subsection. For purposes of the previous sentence, an individual shall not be considered as participating in such a program, with respect to a year, unless such individual satisfies such requirements, including testing, included in such program for such year, as specified by the Secretary.

(c) Consultation- In developing a training program under subsection (a) for a Service area, the Secretary shall consult with representatives of each Indian tribe served in such area.

SEC. 126. RELOCATION REIMBURSEMENT.

(a) In General- In the case of an employee of the Service who relocates to serve in a different capacity or position as an employee of the Service, the Secretary shall, subject to subsection (b), offer such employee reimbursement for reasonable costs associated with such relocation, as determined by the Secretary, incurred by such employee if--

(1) such relocation is to fill a position that--

(A) is at a Service facility that is located in a rural area or medically underserved area; and

(B) had not been filled by a full-time non-contractor for a period of at least 6 months; or

(2) such relocation is to fill a position that is for hospital management or administration, as determined by the Secretary.

(b) Amount for Relocation-

(1) IN GENERAL- The amount of reimbursement to an employee under subsection (a) shall be in an amount that is at least 50 percent, but not more than 75 percent, of the specified pay amount (as described in paragraph (2)) of the employee.

(2) SPECIFIED PAY AMOUNT- For purposes of paragraph (1), the specified pay amount, with respect to an employee, is the annual rate of basic pay of the employee in effect at the beginning of the service period of such employee multiplied by the number of years (including fractions of a year) in the service period, not to exceed 4 years.

(c) Clarification- Nothing in this section shall be construed as limiting the authority of the Secretary, as in existence before the enactment of this section, to offer reimbursement for travel or relocation.

SEC. 128. STREAMLINING MEDICAL VOLUNTEER CREDENTIALING PROCESS.

(a) In General- The Secretary, acting through the Service, shall, in accordance with subsection (b), implement a Service-wide centralized credentialing system to credential licensed health professionals who seek to volunteer at a Service facility.

(b) Requirements- The credentialing system implemented under subsection (a) shall be in accordance with the following:

(1) Credentialing of licensed health professionals who seek to volunteer at a Service facility shall occur at the Service level.

(2) Credentialing procedures under such system shall be uniform throughout the Service.

(3) Under such system, in the case that such a licensed health professional has successfully completed the credentialing procedures under such system, such professional shall be authorized to treat patients at any Service facility or other facility within a Service area.

(c) Regulations- The Secretary may promulgate regulations to implement this section.

(d) Consultation- The Secretary may consult with public and private associations of medical providers in the development of the credentialing system under this section.

(e) Application- The credentialing system under this section shall apply with respect to licensed health professionals seeking to volunteer with respect to--

(1) providing direct health care services at a Service facility; and

(2) providing services at facilities operated or contracted by a tribe, tribal organization, or urban Indian organization under the Indian Self-Determination and Education Assistance Act.

(f) Clarification- Nothing in this section shall be construed to inhibit a tribe's authority to enter into a compact or contract under the Indian Self-Determination and Education Assistance Act.

Section 226 of the Indian Health Care Improvement Act (25 U.S.C. 1621y)

§1621y. Contract health service administration and disbursement formula

(a) Submission of report

[As soon as practicable after March 23, 2010] Not later than 2 years after the date of the enactment of section 227, the Comptroller General of the United States shall submit to the Secretary, the Committee on Indian Affairs of the Senate, and the Committee on Natural Resources of the House of Representatives, and make available to each Indian tribe, a report describing the results of [the] a study of the Comptroller General regarding the funding of the contract health service program (including historic funding levels and a recommendation of the funding level needed for the program) and the administration of the contract health service program (including the distribution of funds pursuant to the program), [as requested by Congress in March 2009, or pursuant to section 1680t of this title] including as amended pursuant to section 227.

(b) Consultation with tribes

On receipt of the report under subsection (a), the Secretary shall consult with Indian tribes regarding the contract health service program, including the distribution of funds pursuant to the program, and submit, not later than one year after the date of the enactment of section 227 and annually thereafter, to Congress a report on-

(1) to determine whether the current distribution formula would require modification if the contract health service program were funded at the level recommended by the Comptroller General;

(2) to identify any inequities in the current distribution formula under the current funding level or inequitable results for any Indian tribe under the funding level recommended by the Comptroller General;

(3) to identify any areas of program administration that may result in the inefficient or ineffective management of the program; [and]

(4) to determine whether during the period of the report any contract health service delivery area, tribe, tribal organization, or urban Indian organization had a shortfall in such funding and, if so, the amount of such shortfall; and [sic]

(5) recommendations for such legislative action as the Secretary deems appropriate. [sic]

[(4)] (5) [sic] to identify any other issues and recommendations to improve the administration of the contract health services program and correct any unfair results or funding disparities identified under paragraph (2), including recommendations for such legislative actions as the Secretary determines appropriate.

[(c) Subsequent action by Secretary

If, after consultation with Indian tribes under subsection (b), the Secretary determines that any issue described in subsection (b)(2) exists, the Secretary may initiate procedures under subchapter III of chapter 5 of title 5 to negotiate or promulgate regulations to establish a disbursement formula for the contract health service program funding.]

Title II of the Indian Health Care Improvement Act (25 U.S.C. 1621y et seq.)

SUBCHAPTER II-HEALTH SERVICES

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SEC. 227. PURCHASED/REFERRED CARE PROGRAM DISBURSEMENT FORMULA.

(a) In General- The Secretary shall, with respect to the Purchased/Referred Care program (formerly referred to as the `contract health services program') funded by the Indian Health Service and operated by the Indian Health Service, an Indian tribe, or tribal organization, review the distribution of funds pursuant to the program and initiate procedures under subchapter III of chapter 5 of title 5, United States Code, to negotiate or promulgate regulations to develop and implement a revised distribution formula in accordance with the subsequent subsections of this section.

(b) Considerations- In developing the revised distribution formula under subsection (a), the Secretary shall consider--

- (1) the extent to which services are available at a Service hospital or facility of the Service rather than the mere existence of such a hospital or facility;
- (2) population growth and the potential for population growth;
- (3) the socioeconomic makeup of the population of each contract health service delivery area;
- (4) the geographic makeup of each contract health service delivery area;
- (5) the size of the hospital or facility;
- (6) the relative regional cost of purchasing services;
- (7) actual counts of Purchased/Referred Care users; and
- (8) accreditation problems at the Service hospital or facility of the Service.

(c) Implementation Deadline- The revised distribution formula under subsection (a) shall be implemented not later than the date that is 3 years after the first October 1 following the date of the enactment of this Act.

(d) Transition-

- (1) IN GENERAL- Notwithstanding any other provision of law, for the period beginning on the first October 1 following the date of the enactment of this section and ending the day before the implementation date of the revised distribution formula under subsection (a), the Secretary shall provide for the distribution of funds, with respect to direct health care services provided by a Service facility, pursuant to the Purchased/Referred Care program (and with respect to services provided by any other facility under such program, at the option of such facility) be consistent with the following:

(A) During any portion of such period for which a Service area has been designated as a high IHS level area under paragraph (2)(B), such area shall not receive any funds pursuant to such program in addition to the base allotment determined under the distribution formula under the program for 2016 with respect to such area.

(B) In the case that during such period the amount of funds made available to the Service for such distribution under such program is in excess of the total amounts of base allotments for distribution under such program for 2016, the Secretary shall distribute such excess amount, in accordance with a methodology specified by the Secretary, to Service areas which for an applicable portion of such period of excess funding have been designated as a low IHS level area under paragraph (2)(A).

(2) AREA DESIGNATIONS- For purposes of paragraph (1), the Secretary shall, with respect to each contract health service delivery area--

(A) review the services provided in the area to determine the IHS medical priority level pursuant to section 136.23(e) of title 42, Code of Federal Regulations, of such services; and

(B) in the case majority, as specified by the Secretary, of the services so provided in the area were determined to have--

(i) such a priority level of a I or II, designate such area as a low IHS level area; and

(ii) any other priority level, designate such area as a high IHS level area.

(e) Application of Reduction Clause- In the case of a facility that, as of the date of the enactment of this section, is under contract with the Secretary with respect to the Purchased/Referred Care program and such contract applies to a period to which subsection (d) or the revised distribution formula under subsection (a) applies, if application of subsection (d) or the revised distribution formula results in the distribution of an amount of funds to such facility during such period that is less than the amount of funds that would be provided during such period to such facility under such contract with respect to the Purchased/Referred Care program before application of such subsection (d) or such revised distribution formula, respectively, the Secretary may under section 106(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j-1(b)) reduce such amount accordingly to be consistent with such subsection (d) or revised distribution formula, respectively.

(f) Clarification- Nothing in this section shall be construed to supersede a Tribe's self-governance contract under the Indian Self-Determination and Education Assistance Act.

(g) Update- The Secretary shall periodically, but not more frequently than once every 3 years and not less frequently than once every five years, review and, as necessary, update the formula implemented under subsection (a).

(h) Consultation- In developing the formula under subsection (a) and reviewing and making updates to such formula under subsection (f), the Secretary shall consult with Indian tribes, including such tribes consulted for purposes of carrying out section 226.

(i) Reports- Not later than one year after the date of the enactment of this section, and annually thereafter, the Secretary shall submit to Congress a report on the implementation of this section. Each such report shall include information, with respect to the period for such report, on--

(1) the distribution of funds for such period pursuant to the Purchased/Referred Care program among the contract health service delivery area, tribes, tribal organizations, and urban Indian organizations;

(2) whether during such period any contract health service delivery area, tribe, tribal organization, or urban Indian organization had a shortfall in such funding and, if so, the amount of such shortfall; and

(3) recommendations for such legislative action as the Secretary deems appropriate.

SEC. 228. PURCHASED/REFERRED CARE PROGRAM BACKLOG.

Not later than one year after the date of the enactment of this section, the Secretary shall develop and implement a system to prioritize any backlog of unpaid balances under the Purchased/Referred Care program for each Service area. In developing such system, the Secretary shall consider--

(1) the monetary amount of each such unpaid balance; and

(2) how long such balance has remained unpaid.

Title III of the Indian Health Care Improvement Act (25 U.S.C. 1631 et seq.)

SUBCHAPTER III-HEALTH FACILITIES

* * * * *

SEC. 314. STANDARDS TO IMPROVE TIMELINESS OF CARE.

(a) In General- The Secretary, acting through the Service, shall--
(1) establish, by regulation, standards to measure the timeliness of the provision of health care services in Service facilities; and
(2) make such standards available to all Service areas and Service facilities.

(b) Data Collection- The Secretary, acting through the Service, shall develop a process for Service facilities to submit to the Secretary data with respect to the standards established under subsection (a).

Section 601 of the Indian Health Care Improvement Act (16 U.S.C. 1661)

§1661. Establishment of the Indian Health Service as an agency of the Public Health Service

(a) Establishment

(1) In general

In order to more effectively and efficiently carry out the responsibilities, authorities, and functions of the United States to provide health care services to Indians and Indian tribes, as are or may be on and after November 23, 1988, provided by Federal statute or treaties, there is established within the Public Health Service of the Department the Indian Health Service.

(2) Director

The Service shall be administered by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall report to the Secretary. Effective with respect to an individual appointed by the President, by and with the advice and consent of the Senate, after January 1, 2008, the term of service of the Director shall be 4 years. A Director may serve more than 1 term.

(3) Incumbent

The individual serving in the position of Director of the Service on the day before March 23, 2010, shall serve as Director.

(4) Advocacy and consultation

The position of Director is established to, in a manner consistent with the government-to-government relationship between the United States and Indian Tribes-

- (A) facilitate advocacy for the development of appropriate Indian health policy; and
- (B) promote consultation on matters relating to Indian health.

(b) Agency

The Service shall be an agency within the Public Health Service of the Department, and shall not be an office, component, or unit of any other agency of the Department.

(c) Duties

The Director shall-

(1) perform all functions that were, on the day before March 23, 2010, carried out by or under the direction of the individual serving as Director of the Service on that day;

(2) perform all functions of the Secretary relating to the maintenance and operation of hospital and health facilities for Indians and the planning for, and provision and utilization of, health services for Indians, including by ensuring that all agency directors, managers, and chief executive officers have appropriate and adequate training, experience, skill levels, knowledge, abilities, and education (including continuing training requirements) to competently fulfill the duties of the positions and the mission of the Service;

(3) administer all health programs under which health care is provided to Indians based upon their status as Indians which are administered by the Secretary, including programs under-

(A) this chapter;

(B) [section 13 of this title](#);

(C) the Act of August 5, 1954 ([42 U.S.C. 2001 et seq.](#));

(D) the Act of August 16, 1957 ([42 U.S.C. 2005 et seq.](#)); and

(E) the Indian Self-Determination and Education Assistance Act ([25 U.S.C. 450 et seq.](#));

(4) administer all scholarship and loan functions carried out under subchapter I;

(5) directly advise the Secretary concerning the development of all policy- and budget-related matters affecting Indian health;

(6) collaborate with the Assistant Secretary for Health concerning appropriate matters of Indian health that affect the agencies of the Public Health Service;

(7) advise each Assistant Secretary of the Department concerning matters of Indian health with respect to which that Assistant Secretary has authority and responsibility;

(8) advise the heads of other agencies and programs of the Department concerning matters of Indian health with respect to which those heads have authority and responsibility;

(9) coordinate the activities of the Department concerning matters of Indian health; and

(10) perform such other functions as the Secretary may designate.

(d) Authority

(1) In general

The Secretary, acting through the Director, shall have the authority-

(A) except to the extent provided for in paragraph (2) **and subject to paragraph (4)** [sic], to appoint and compensate employees for the Service in accordance with title 5;

(B) to enter into contracts for the procurement of goods and services to carry out the functions of the Service; and

(C) to manage, expend, and obligate all funds appropriated for the Service.

(2) Personnel actions

Notwithstanding any other provision of law, the provisions of [section 472 of this title](#),¹ shall apply to all personnel actions taken with respect to new positions created within the Service as a result of its establishment under subsection (a).

(4) [sic] EMPLOYMENT AUTHORITY-

(A) IN GENERAL- The Secretary may, with respect to any employee described in subparagraph (B), provide that one or more provisions of chapter 74 of title 38, United States Code (other than subchapter V of such chapter or of regulations promulgated under such chapter other than under such subchapter), shall apply--

(i) in lieu of any provision of title 5 of the United States Code (other than as applied pursuant to section 834); or
(ii) notwithstanding any lack of specific authority for a matter with respect to which title 5 of the United States Code relates.

(B) APPLICABILITY TO EMPLOYEES- Authority under this paragraph may be exercised with respect to any employee in the Service holding a position--

(i) to which chapter 51 of title 5 of the United States Code applies, excluding any senior executive service position; and

(ii) which involves health care responsibilities.

(C) DEFINITION- For purposes of this paragraph, "health care" means direct patient-care services or services incident to direct patient-care services.

Title VI of the Indian Health Care Improvement Act (25 U.S.C. 1611 et seq.)

SUBCHAPTER VI-MISCELLANEOUS

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SEC. 605. AUTHORITY TO WAIVE INDIAN PREFERENCE LAWS.

To enhance recruitment and retention of employees of the Service, the Secretary may waive the requirements of the Indian preference laws (as defined in section 2(e) of Public Law 96-135 (25 U.S.C. 472a(e))) with respect to a personnel action with respect to a Service unit with the written request or resolution of an Indian tribe located within the applicable Service unit--

(1) if such personnel action is with respect to a facility that has a personnel vacancy rate of at least 20 percent; or

(2) in the case such personnel action is with respect to a former employee of the Service or former tribal employee who was removed from such former employment or demoted for misconduct that occurred during the five years prior to the date of such personnel action.

Section 4303, Title 5, United States Code

§4303. Actions based on unacceptable performance

(a) Subject to the provisions of this section, an agency may reduce in grade or remove an employee for unacceptable performance.

(b)(1) An employee whose reduction in grade or removal is proposed under this section is entitled to-

(A) 30 days' advance written notice of the proposed action which identifies-

(i) specific instances of unacceptable performance by the employee on which the proposed action is based; and

(ii) the critical elements of the employee's position involved in each instance of unacceptable performance;

(B) be represented by an attorney or other representative;

(C) a reasonable time to answer orally and in writing; and

(D) a written decision which-

(i) in the case of a reduction in grade or removal under this section, specifies the instances of unacceptable performance by the employee on which the reduction in grade or removal is based, and

(ii) unless proposed by the head of the agency, has been concurred in by an employee who is in a higher position than the employee who proposed the action.

(2) An agency may, under regulations prescribed by the head of such agency, extend the notice period under subsection (b)(1)(A) of this section for not more than 30 days. An agency may extend the notice period for more than 30 days only in accordance with regulations issued by the Office of Personnel Management.

(c) The decision to retain, reduce in grade, or remove an employee-

(1) shall be made within 30 days after the date of expiration of the notice period, and

(2) in the case of a reduction in grade or removal, may be based only on those instances of unacceptable performance by the employee-

(A) which occurred during the 1-year period ending on the date of the notice under subsection (b)(1)(A) of this section in connection with the decision; and

(B) for which the notice and other requirements of this section are complied with.

(d) If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advance written notice provided under subsection (b)(1)(A) of this section, any entry or other notation of the unacceptable performance for which the action was proposed under this section shall be removed from any agency record relating to the employee.

(e) Any employee who is-

(1) a preference eligible;

(2) in the competitive service; or

(3) in the excepted service and covered by subchapter II of [chapter 75](#), and who has been reduced in grade or removed under this section is entitled to appeal the action to the Merit Systems Protection Board under section 7701.

(f) This section does not apply to-

(1) the reduction to the grade previously held of a supervisor or manager who has not completed the probationary period under [section 3321\(a\)\(2\) of this title](#),

(2) the reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less, [or](#)

(3) the reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions [.1](#) ;[or](#)

(4) any removal or demotion under section 834 of the Indian Health Care Improvement Act.

Title VIII of The Indian Health Care Improvement Act (25 U.S.C. 1671 et seq.)

SUBCHAPTER VIII-MISCELLANEOUS

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SEC. 833. SERVICE HOSPITAL LONG-TERM CONTRACT PILOT PROGRAM.

(a) In General- The Secretary, acting through the Service, shall implement a 7-year pilot program to test the viability and advisability of entering into long-term contracts for the operation of eligible Service hospitals with governance structures that include tribal input.

(b) Elements- Under such pilot program, subject to subsection (e), the following shall apply:

(1) The Secretary shall select three eligible Service hospitals in rural areas to participate in the pilot program.

(2) For each such participating hospital, the Secretary shall enter into a long-term contract.

(3) At each such participating hospital, the Secretary, in consultation with the primary Indian tribes served by the hospital, shall install a governing board described in subsection (d), which shall be responsible for overseeing the local operation of the hospital.

(c) Eligible Service Hospital- For purposes of this section, the term 'eligible Service hospital' means a Service hospital that furnishes services in a rural area to direct services tribes and with respect to which the Secretary has obtained the permission of the primary Indian tribes served by the hospital for the hospital to participate under the pilot program under this section.

(d) Governance Board Described- For purposes of subsection (b), a governance board described in this subsection, with respect to a Service hospital participating in the pilot program, is a board that satisfies the following criteria:

(1) COMPOSITION-

(A) IN GENERAL- The governance board is composed, in accordance with the best practices specified under paragraph (3), of the following individuals:

(i) Representatives of the Service, who shall be selected by the Secretary.

(ii) Representatives of the Service hospital.

(iii) Representatives of each primary Indian tribe served by the hospital, who shall be selected by the respective Indian tribe.

(iv) Experts in health care administration and delivery, who shall--

(I) be selected by the Secretary and respective Indian tribe; and

(II) to the extent possible, located in the State in which the hospital is located or otherwise familiar with such State.

(B) VOTING RIGHTS- In determining the composition of the board with respect to voting rights on the board--

(i) the number of voting members representing the Service shall be equal to the number of voting members representing the Indian tribes involved; and

(ii) the number of voting members representing the hospital may not be greater than the number of voting members representing the Service or the Indian tribes involved.

(2) DUTIES- The governance board shall perform duties in accordance with the best practices specified under paragraph (3) and shall include developing financial and quality metrics and standards for salaries, recruitment, retention, training, and dismissal of employees of such hospital.

(3) BEST PRACTICES- The Secretary shall specify best practices for the governance board described in this subsection, including best practices relating to the number of members of such board, the authorities of the board, and the duties of the board.

(e) Treatment of Eligible Service Hospitals Currently Under Contract- In the case of an eligible Service hospital that is under a current contract with the Secretary as of the initiation of the selection process period for the pilot program, in order for such hospital to participate in the pilot program the Secretary, with the agreement of the hospital, may--

(1) notwithstanding any other provision of law, modify or terminate such contract and in order for such hospital to enter into a long-term contract under the pilot program; or

(2) enter into a long-term contract under the pilot program (and begin the pilot program) beginning on the date after the last date of such current contract.

(f) Long-Term Contract Defined- For purposes of this section, the term 'long-term contract' means a contract for a period of at least 5 years.

(g) Clarification- Nothing in this section shall be construed to inhibit a tribe's authority to enter into a compact or contract under the Indian Self-Determination and Education Assistance Act.

(h) Reports- For each year of the pilot program, the Secretary shall submit a report to Congress on the results of the program demonstrated during the respective year. Each such report shall include the following:

(1) Information related to the financial health of each eligible hospital participating in the pilot program.

(2) Information on the affect the pilot program has on access to care.

(3) Information on patient satisfaction with services provided at such hospitals.

(4) The number of readmissions at such hospitals.

(5) The number of hospital-acquired conditions at such hospitals.

(6) Recommendations on the viability and advisability of the long-term contracts and hospital governance structure under such pilot program.

(7) Any other information the Secretary considers necessary for a proper analysis of the pilot program.

SEC. 834. REMOVAL OR DEMOTION OF EMPLOYEES.

(a) In General- The Secretary may remove or demote an individual who is an employee of the Service if the Secretary determines the performance or misconduct of the individual warrants such removal or demotion. If the Secretary so removes or demotes such an individual, the Secretary may--

(1) remove the individual from the Service; or

(2) demote the individual by means of--

(A) a reduction in grade for which the individual is qualified and that the Secretary determines is appropriate; or

(B) a reduction in annual rate of pay that the Secretary determines is appropriate.

In the case of an individual who is removed under paragraph (1) or demoted under paragraph (2), the Secretary may require such individual take unpaid administrative leave for not longer than 10 consecutive work days.

(b) Pay of Certain Demoted Individuals- (1) Notwithstanding any other provision of law, any individual subject to a demotion under subsection (a)(2)(A) shall, beginning on the date of such demotion, receive the annual rate of pay applicable to such grade.

(2) An individual so demoted may not be placed on administrative leave or any other category of paid leave during the period during which an appeal (if any) under this section is ongoing, and may only receive pay if the individual reports for duty. If an individual so demoted does not report for duty, such individual shall not receive pay or other benefits pursuant to subsection (e)(5).

(c) Notice to Secretary- Not later than 30 days after removing or demoting an individual under subsection (a), the Service shall submit to the Secretary notice in writing of such removal or demotion and the reason for such removal or demotion.

(d) Procedure- (1) The procedures under section 7513(b) of title 5 and chapter 43 of such title shall not apply to a removal or demotion under this section.

(2)(A) Subject to subparagraph (B) and subsection (e), any removal or demotion under subsection (a) may be appealed to the Merit Systems Protection Board under section 7701 of title 5.

(B) An appeal under subparagraph (A) of a removal or demotion may only be made if such appeal is made not later than seven days after the date of such removal or demotion.

(e) Expedited Review by Administrative Judge- (1) Upon receipt of an appeal under subsection (d)(2)(A), the Merit Systems Protection Board shall refer such appeal to an administrative judge pursuant to section 7701(b)(1) of title 5. The administrative judge shall expedite any such appeal under such section and, in any such case, shall issue a decision not later than 45 days after the date of the appeal.

(2) Notwithstanding any other provision of law, including section 7703 of title 5, the decision of an administrative judge under paragraph (1) shall be final and shall not be subject to any further appeal.

(3) In any case in which the administrative judge cannot issue a decision in accordance with the 45-day requirement under paragraph (1), the removal or demotion is final. In such a case, the Merit Systems Protection Board shall, within 14 days after the date that such removal or demotion is final, submit to Congress a report that explains the reasons why a decision was not issued in accordance with such requirement.

(4) The Merit Systems Protection Board or administrative judge may not stay any removal or demotion under this section.

(5) During the period beginning on the date on which an individual appeals a removal from the Service under subsection (d) and ending on the date that the administrative judge issues a final decision on such appeal, such individual may

not receive any pay, awards, bonuses, incentives, allowances, differentials, student loan repayments, special payments, or benefits.

(6) To the maximum extent practicable, the Secretary shall provide to the Merit Systems Protection Board, and to any administrative judge to whom an appeal under this section is referred, such information and assistance as may be necessary to ensure an appeal under this subsection is expedited.

(f) Termination of Investigations by Office of Special Counsel-

Notwithstanding any other provision of law, the Special Counsel (established by section 1211 of title 5) may terminate an investigation of a prohibited personnel practice alleged by an employee or former employee of the Department after the Special Counsel provides to the employee or former employee a written statement of the reasons for the termination of the investigation. Such statement may not be admissible as evidence in any judicial or administrative proceeding without the consent of such employee or former employee.

(g) Relation to Title 5- The authority provided by this section is in addition to the authority provided by subchapter V of chapter 75 of title 5 and chapter 43 of such title.

(h) Definitions- In this section:

(1) The term "individual" means an individual occupying a position at the Service but does not include--

(A) an individual, as that term is defined in section 713(g)(1); or

(B) a political appointee.

(2) The term "grade" has the meaning given such term in section 7511(a) of title 5.

(3) The term "misconduct" includes neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

(4) The term "political appointee" means an individual who is--

(A) employed in a position described under sections 5312 through 5316 of title 5 (relating to the Executive Schedule);

(B) a limited term appointee, limited emergency appointee, or noncareer appointee in the Senior Executive Service, as defined under paragraphs (5), (6), and (7), respectively, of section 3132(a) of title 5; or

(C) employed in a position of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5 of the Code of Federal Regulations.

§108. Income from discharge of indebtedness

* * * * *

(f) Student loans

(1) In general

In the case of an individual, gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of any student loan if such discharge was pursuant to a provision of such loan under which all or part of the indebtedness of the individual would be discharged if the individual worked for a certain period of time in certain professions for any of a broad class of employers.

(2) Student loan

For purposes of this subsection, the term "student loan" means any loan to an individual to assist the individual in attending an educational organization described in section 170(b)(1)(A)(ii) made by-

- (A) the United States, or an instrumentality or agency thereof,
- (B) a State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof,
- (C) a public benefit corporation-
 - (i) which is exempt from taxation under section 501(c)(3),
 - (ii) which has assumed control over a State, county, or municipal hospital, and
 - (iii) whose employees have been deemed to be public employees under State law, or
- (D) any educational organization described in section 170(b)(1)(A)(ii) if such loan is made-
 - (i) pursuant to an agreement with any entity described in subparagraph (A), (B), or (C) under which the funds from which the loan was made were provided to such educational organization, or
 - (ii) pursuant to a program of such educational organization which is designed to encourage its students to serve in occupations with unmet needs or in areas with unmet needs and under which the services provided by the students (or former students) are for or under the direction of a governmental unit or an organization described in section 501(c)(3) and exempt from tax under section 501(a).

The term "student loan" includes any loan made by an educational organization described in section 170(b)(1)(A)(ii) or by an organization exempt from tax under section 501(a) to refinance a loan to an individual to assist the individual in attending any such educational organization but only if the refinancing loan is pursuant to a program of the refinancing organization which is designed as described in subparagraph (D)(ii).

(3) Exception for discharges on account of services performed for certain lenders

Paragraph (1) shall not apply to the discharge of a loan made by an organization described in paragraph (2)(D) if the discharge is on account of services performed for either such organization.

(4) Payments under national health service corps loan repayment program, Indian Health Service Loan Repayment Program, and certain state loan repayment programs

In the case of an individual, gross income shall not include any amount received under section 338B(g) of the Public Health Service Act, under a State program described in section 338I of such Act, **under section 108 of the Indian Health Care Improvement Act**, or under any other State loan repayment or loan forgiveness program that is intended to provide for the increased availability of health care services in underserved or health professional shortage areas (as determined by such State).