INDIAN PROVISIONS IN THE AFFORDABLE CARE ACT

The Affordable Care Act (P.L.111-148) was signed into law on March 23, 2010, under the Obama Administration. Broadly, it enacted significant regulatory changes to the U.S. health system and expanded healthcare coverage for millions of Americans. It was also a landmark law for the Indian health system, having permanently reauthorized the Indian Health Care Improvement Act. This chart summarizes the major provisions of the Affordable Care Act that affect the Indian health system and their current status.

Affordable Care Act		
Sec. 1501. Requirement to maintain minimum essential coverage. [26 U.S.C. § 5000A]; 42 U.S.C. § 18091	All Americans are required to acquire and maintain acceptable health insurance coverage or be subject to tax penalties.	Members of Indian Tribes are exempt from this requirement.
Sec. 1402. **Reduced cost-sharing for individuals enrolling in qualified health plans.** [42 U.S.C. § 18071]	Creates a marketplace of health insurance plans called Qualified Health Plans that offer minimum essential coverage and subsidies on a sliding scale for individuals between 100% and 400% of the federal poverty level.	There are several Indian-specific provisions. • Tribal members between 100-300% of the federal poverty level can enroll in a zero cost sharing plan and have no cost-sharing from any provider. • Tribal members with incomes below 100% of FPL or over 400% of FPL can enroll in a limited cost sharing plan and have no cost sharing when receiving services at an I/T/U or with a referral from an I/T/U. • Tribal members can enroll in Qualified Health Plans on a monthly basis.
Sec. 2001 **Medicaid Coverage for the Lower Income Populations (Coverage for Individuals With Income at or Below 133 Percent of the Poverty Line**) [42 U.S.C. § 1396a]	Medicaid Expansion: Expands Medicaid to cover individuals up to 133% of the federal poverty level.	*National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012), made Medicaid expansion optional for states.
Sec. 2901. **Special rules relating to Indians**. [42 U.S.C. § 18071(d)]; [25 U.S.C. § 1623a(e)(13)(F)(ii)]	(1) Makes IHS, Tribal, and urban programs "express lane agencies" to expedite children's eligibility determinations for Medicaid and CHIP.	The payor of last resort rule means that the IHS pays only after Medicare, Medicaid, VA, CHIP and private insurance pay.

	(2) Makes the IHS, Tribal, and urban programs the payer of last resort for persons eligible for services through those programs	
Sec. 2902. Elimination of sunset for reimbursement for all Medicare part B services furnished by certain Indian hospitals and clinics [42 U.S.C. § 1395qq] Sec. 3314. Including costs incurred by AIDS drug assistance programs and Indian Health Service in providing prescription drugs toward the annual out-of-pocket threshold under Part D. [42 U.S.C. § 1395w-102]	(1) Permanent authority for IHS and Tribal programs to collect for all items and services covered by Medicare Part B. (2) Drugs dispensed by IHS, Tribal, and urban Indian pharmacies are "true out-of-pocket" costs for Medicare Part D.	
Sec. 9021. Exclusion of health benefits provided by Indian tribal governments. [26 U.S.C. § 139D]	Excludes from gross income the value of health benefits provided by a IHS and Tribal program to its members.	Allows tribes to pay for health care coverage for their members without any tax implications for the member.
Sec. 2951. Maternal, infant, and early childhood home visiting programs. [42 U.S.C. § 711]	Makes IHS, Tribal, and urban programs eligible for grants through the Maternal and Child Health Services program	
Sec. 4302. Understanding health disparities: data collection and analysis. [42 U.S.C. § 300kk]	Requires HHS to collect data for all federally-supported health programs, including IHS, Tribal, and urban programs, according to race, ethnicity, sex, primary language, and disability status	

Indian Health Care Improvement Act		
I. INDIAN HEALTH MANPOWER		
Sec. 106. Continuing Education Allowances [25 U.S.C. § 1615]	Authorizes new education allowances and stipends for professional development.	Congress has not provided proper funding.
Sec. 119. **Community Health Aide Program** [25 U.S.C. § 1616l]	Authorizes the Secretary to establish a national Community Health Aide Program (CHAP). Prohibits lower-48 states from including Dental Health Aide Therapists services except when state law permits midlevel dental services.	Congress has not provided proper funding. An additional $5 million was appropriated in FY 2024. IHS still working on implementing the program.

Sec. 123. Health Professional Chronic Shortage Demonstration Project [25 U.S.C. § 1616p]	(1) Authorizes demonstration programs for Indian health programs to address chronic health professional shortages. (2) Authorizes Indian health programs to provide training to medical students, CHAPs, and Community Health Representatives.	Congress has not provided proper funding. It appropriated $80.6 million for Indian health professions in FY 2024.
Sec. 124. Exemption from Payment of Certain Fees [25 U.S.C. § 1616q]	Exempts employees of Tribal organizations and Urban Indian Organizations (UIOs) from certain Federal licensing fees. This is the same benefit enjoyed by IHS employees.	
II. HEALTH SERVICES		
Sec. 201. Indian Health Care Improvement Fund (IHCIF) [25 U.S.C. § 1621]	IHCIF may be supplied to IHS or ISDEAA programs. The stated function of the IHCIF is to eliminate inequities in funding for direct and purchased/referred care programs.	In FY 2024, the House proposed to consolidate the IHCIF into the Hospitals & Health Clinic line item, but this did not make it into the final bill.
Sec. 202. Catastrophic Health Emergency Fund (CHEF) [25 U.S.C. § 1621a]	The CHEF threshold is $19,000 in 2000, adjusted annually each year thereafter for medical inflation.	The IHS issued a Notice of Proposed Rulemaking in July 2023 proposing to lower the threshold to $19,000 from $25,000.
Sec. 204. Diabetes Prevention, Treatment, and Control [25 U.S.C. § 1621c]	Authorizes dialysis programs and institutes other requirements for diabetes prevention and treatment.	Congress has not provided proper funding. The Special Diabetes Program for Indians was nominally raised in FY 2024. Other Health Services are de facto flat-funded considering inflation and population growth costs.
Sec. 205. Other Authority for Provision of Services [25 U.S.C. § 1621d]	Authorizes new programs including hospice care, long-term care, and home- and community-based care.	Congress has not provided funding for these programs.
Sec. 206. Reimbursement from Certain Third Parties of Costs of Health Services [25 U.S.C. § 1621e]	IHS and Tribal programs have the right to recover from third-party payers for "the reasonable charges billed," … “or, if higher, the highest amount the third party would pay for care and services furnished by providers other than governmental entities”	

Sec. 207. Crediting of Reimbursements 25 [U.S.C. § 1621f]	All reimbursements from Federal program authorities must be credited to the IHS service unit, tribe, tribal organization or UIO that provided the service	
Sec. 209. Behavioral Health Training and Community Education Programs [25 U.S.C. § 1621h(d)]	Requires IHS and DOI to identify staff positions whose qualifications should include behavioral health training and to provide such training or funds to complete such training.	Identification of positions has occurred, but IHS and DOI do not have the funds to provide the required training.
Sec. 212. Coverage of Screening Mammography [25 U.S.C. § 1621k]	Authorizes cancer screenings in addition to mammography.	
Sec. 213. Patient Travel Costs [25 U.S.C. § 1621l]	Authorizes patient travel costs to include qualified escorts.	
Sec. 214. Epidemiology Centers [25 U.S.C. § 1621m]	Requires HHS to share data with Tribal Epidemiology Centers (TECs) as public health authorities under HIPAA.	In January 2024, HHS released a draft Tribal and TEC data-sharing policy in response to complaints that HHS is not sharing data with either.
Sec. 217. American Indians into Psychology Program. [25 U.S.C. § 1621p]	Increases institutions to be awarded grants.	Congress has not provided funding for additional grants. IHS still anticipates awarding three universities in FY 2024.
Sec. 218. Prevention, Control, and Elimination of Communicable and Infectious Diseases [25 U.S.C. § 1621q]	Authorizes new grants and demonstration projects.	Congress has not provided proper funding. It is unclear if the required biennial report on communicable and infectious diseases has been provided.
Sec. 221. Licensing [25 U.S.C. § 1621t]	A healthcare professional employed by a Tribal health program is not required to hold a license issued by the state in which the tribal health program is located as long as the professional is licensed in any state	
Sec. 222. Liability for Payment [25 U.S.C. § 1621u]	IHS must inform PRC providers that an Indian patient is not liable for payment within 5 business days	Rep. Johnson (R-SD) has introduced two bills (H.R.7515 and H.R.7516) to address the problem of PRC providers seeking payments from Indian patients.
Sec. 223. Offices of Indian Men's Health and Indian Women's Health [25 U.S.C. § 1621v]	Authorizes establishment of Office on Indian Men's Health, maintains authorization of Office on Indian Women's Health.	New offices have not yet been created due to a lack of funds. These functions are currently carried out by the Office of Clinical and Preventative Health.

Sec. 226. Contract Health Service Administration and Disbursement Formula [25 U.S.C. § 1621y]	Directs IHS to update the PRC distribution formula in consultation with Tribes.	
III. HEALTH FACILITIES		
Sec. 301. Health Care Facility Priority System [25 U.S.C. § 1631(c)]	Establishes a Health Care Facility Priority System.	
Sec. 307. Indian Health Care Delivery Demonstration Projects [25 U.S.C. § 1637]	Authorizes demonstration projects to test new models/means of health care delivery.	Congress has not provided proper funding.
Sec. 309. Tribal Management of Federally Owned Quarters [25 U.S.C. § 1638a]	Authorize direct operation of federally-owned staff quarters under an ISDEAA agreement	
Sec. 311. Other Funding, Equipment, and Supplies for Facilities [25 U.S.C. § 1638e]	Authorizes other federal agencies to transfer funds for Health Care and Sanitation Facilities to IHS	
Sec. 312. Indian Country Modular Component Facilities Demonstration Program [25 U.S.C. § 1638f]	Directs the Secretary to establish a demonstration program with no less than 3 grants for modular facilities.	IHS has not yet established the program due to lack of funds but provided a feasibility study on this topic in September 2014 which said modular is an “option in the selection process of new facilities planning and construction for IHS.”
Sec. 313. Mobile Health Stations Demonstration Program [25 U.S.C. § 1638g]	Directs the Secretary to establish a demonstration program with at least 3 mobile health station projects.	Congress has not provided proper funding.
IV. ACCESS TO HEALTH SERVICES		
Sec. 401. Treatment of Payments under Social Security Act Health Benefits Programs [25 U.S.C. § 1641]	Requires IHS to return 100% of collections from the IHS "special fund" to the service unit which provided the service (up from 80%)	
Sec. 402. **Purchasing Health Care Coverage** [25 U.S.C. § 1642]	Allows Tribes, Tribal organizations, and UIOs to use federal funds to purchase health benefits for their beneficiaries	
Sec. 404. Grants and Contracts to Facilitate Outreach, Enrollment, and Coverage Under Social Security Act	Directs IHS to make grants or enter contracts with Tribes and Tribal organizations to assist in	Congress has not provided proper funding.

and Other Programs [25 U.S.C. § 1644]	enrolling Indians in Social Security Act and other health benefit programs	
Sec. 405. Sharing Arrangements with Federal Agencies [25 U.S.C. § 1645]	Allows the Department of Defense and Department of Veterans Affairs (VA) to share facilities/services and requires reimbursement to IHS and Tribal programs	In 2023, the IHS updated its reimbursement agreement with the VA. The Tribal Health Program template is under review.
Sec. 407**. Eligible Indian Veteran Services** [25 U.S.C. § 1647]	Allows IHS to cover a Department of Veterans Affairs co-pay	
Sec. 408. Nondiscrimination under Federal Health Care Programs in Qualifications for Reimbursement for Services [25 U.S.C. § 1647a]	IHS, Tribal, and urban programs are eligible to participate in Federal healthcare programs without a state license so long as they meet the requirements for licensure	
Sec. 409. Access to Federal Insurance [25 U.S.C. § 1647b]	Tribes and Tribal organizations operating any ISDEAA program (not just health) may elect to purchase insurance coverage for all their employees (not just those of the ISDEAA program) through the Federal employee health benefits program	
Sec. 410. General Exceptions [25 U.S.C. § 1647c]	Exempts single- or special-purpose insurance products from being considered a third-party payer	
Sec. 411. Navajo Nation Medicaid Agency Feasibility Study [25 U.S.C. § 1647d]	Requires HHS to conduct a feasibility study on treating the Navajo Nation as a state under Medicaid	HHS determined it could be feasible to treat Navajo Nation as a state under Medicaid, but there would be many challenges such as cost and capacity.
V. URBAN INDIANS		
Sec. 509. Facilities Renovation [25 U.S.C. § 1659]	Authorizes funds for construction or expansion.	Congress has not provided proper funding. It included language in the Infrastructure Investment and Jobs Act (P.L. 117-58) to allow UIOs to use existing resources to fund infrastructure projects by removing a restriction that required compliance with accreditation standards set by the Joint Commission.
Sec. 514. Conferring with Urban Indian Organizations. [25 U.S.C. § 1660d]	Requires IHS to confer with UIOs.	

Sec. 515. Expand Program Authority for Urban Indian Organizations [25 U.S.C. § 1660e]	Authorizes programs for UIOs regarding communicable disease and behavioral health.	Congress has not provided proper funding.
Sec. 516. Community Health Representatives [25 U.S.C. § 1660f]	Authorizes Community Health Representative program to train and employ Indians to provide services.	Congress has not provided proper funding.
Sec. 517-18. Use of Federal Government Facilities and Sources of Supply; Health Information Technology [25 U.S.C. § 1660g]	(1) Authorizes access to federal property to meet the needs of urban Indian organizations. (2) Authorizes grants to develop, adopt, and implement health information technology.	(1) Protocols developed, but property transfer costs require additional funding. (2) Congress has not provided proper funding.
VI. ORGANIZATIONAL IMPROVEMENTS		
Sec. 601. Establishment of Indian Health Service as an Agency of the Public Health Service [25 U.S.C. § 1661]	Authorizes IHS director to provide direct advice to the Secretary of HHS on policy and budget matters	
Sec. 603. Office of Direct Service Tribes [25 U.S.C. § 1663]	Establishes an Office of Direct Service Tribes	
Sec. 604. Nevada Area Office [25 U.S.C. § 1663a]	Requires IHS to submit a plan to Congress for the establishment of an IHS Nevada Area separate from the Phoenix Area	
VII. BEHAVIORAL HEALTH		
Sec. 702. Behavioral Health Prevention and Treatment Services [25 U.S.C. § 1665a]	Authorizes programs to create a comprehensive continuum of care.	Congress has not provided proper funding.
Sec. 703. Memoranda of Agreement with the Department of the Interior [25 U.S.C. § 1665b]	Directs IHS to enter into memorandums of agreement with the Secretary of Interior to address behavioral health needs	
Sec. 704. Comprehensive Behavioral Health Prevention and Treatment Program [25 U.S.C. § 1665c]	Authorizes expanded behavioral health prevention and treatment programs, including detoxification, community-based rehabilitation, and other programs.	Congress has not provided proper funding. For FY 2024, it appropriated $2 million for essential detoxification services.

Sec. 705. Mental Health Technician Program [25 U.S.C. § 1665d]	Directs IHS to establish a mental health technician program.	Congress has not provided proper funding.
Sec. 706. Licensing Requirement for Mental Health Care Workers [25 U.S.C. § 1665e]	Requires psychologists, social workers, and marriage and family therapists to be licensed	
Sec. 707. Indian Women Treatment Programs [25 U.S.C. § 1665f]	Authorizes grants to develop and implement programs specifically addressing the cultural, historical, social, and childcare needs of Indian women.	Congress has not provided proper funding.
Sec. 708. Indian Youth Program [25 U.S.C. § 1665g]	Requires IHS to develop a program for detoxification and treatment for Indian youth	
Sec. 709. Inpatient and Community Health Facilities Design, Construction, and Staffing [25 U.S.C. § 1665h]	Authorizes construction and staffing for one inpatient mental health care facility per IHS Area.	Congress has not provided proper funding.
Sec. 710. Training and Community Education [25 U.S.C. § 1665i]	Directs HHS, in cooperation with the Department of the Interior, to develop and implement or assist Tribes and Tribal organizations in developing and implementing a community education program for Tribal leadership.	Congress has not provided proper funding for comprehensive training. However, IHS does provide some limited training.
Sec. 711. Behavioral Health Program [25 U.S.C. § 1665j]	Authorizes new competitive grant program for innovative community-based behavioral health programs.	Congress has not provided proper funding.
Sec. 712. Fetal Alcohol Spectrum Disorders [25 U.S.C. § 1665k]	Authorizes new comprehensive training for fetal alcohol spectrum disorders.	Congress has not provided proper funding.
Sec. 713. Child Sexual Abuse and Prevention Treatment Programs [25 U.S.C. § 1665l]	Authorized new regional demonstration projects and treatment programs.	Congress has not provided proper funding.
Sec. 714. Domestic and Sexual Violence Prevention and Treatment [25 U.S.C. § 1665m]	Authorized new regional demonstration projects and treatment programs.	

Sec. 715. Behavioral Health Research [25 U.S.C. § 1665n]	Authorizes grants to research Indian behavioral health issues, including causes of youth suicides.	Congress has not provided proper funding.
Sec. 721-724. Indian Youth Suicide Prevention [25 U.S.C. §§ 1667-1667e]	Authorizes a variety of programs to address youth suicide	Congress has not provided proper funding.
VIII. MISCELLANEOUS		
Sec. 805. Confidentiality of Medical Quality Assurance Records; Qualified Immunity for Participants [25 U.S.C. § 1675]	Facilitates internal quality assurance program reviews for IHS, Tribal, and urban programs	
Sec. 806. Limitation on Use of Funds for Abortions [25 U.S.C. § 1676]	Reaffirms limitation on the use of federal funds for certain abortions	
Sec. 808. Arizona as a Contract Health Service Area [25 U.S.C. § 1678]	Reaffirms Arizona as a Contract Health Service Area	
Sec. 808A. North Dakota and South Dakota as Contract Health Service Delivery Areas [25 U.S.C. §§ 1678, 1678a, 1679]	Provides that North Dakota and South Dakota shall be designated as a contract health service delivery area.	
Sec. 809. Eligibility of California Indians [25 U.S.C. § 1679]	Updates to the unique aspects of providing health services to Indians of California	
Sec. 812. National Health Service Corps [25 U.S.C. § 1680b]	Prohibits the removal of National Health Service Corps personnel from an IHS, Tribal, or urban program unless IHS ensures there will be no reduction in services	
Sec. 813. Health Services for Ineligible Persons [25 U.S.C. § 1680c]	Clarifies the situations under which services may be provided to non-beneficiaries	Allows tribal governments to elect to serve non-beneficiaries if doing so will not result in a diminution of services to beneficiaries. IHS approval no longer needed.
Sec. 822. Shared Services for Long-Term Care [25 U.S.C. § 1680l]	Authorizes IHS to provide directly or enter into an ISDEAA agreement for the delivery of long-term care	

Sec. 826. Annual Budget Submission [25 U.S.C. § 1680p]	Requires changes to the annual budget for IHS	
Sec. 827. Prescription Drug Monitoring [25 U.S.C. § 1680q]	Requires HHS, Attorney General, and Department of the Interior to implement a drug monitoring program at IHS	
Sec. 828. Tribal Health Program Option for Cost-Sharing [25 U.S.C. § 1680r]	Title V programs may charge an Indian for services if they choose to do so. IHS is prohibited from charging Indians for services.	
Sec. 829. Disease and Injury Prevention Report [25 U.S.C. § 1680s]	Requires HHS to submit a report on IHS disease and injury prevention	
Sec. 830. Other GAO Reports [25 U.S.C. § 1680t]	Requires GAO to perform two studies on the effectiveness of Medicare/Medicaid services	
Sec. 831. Traditional Health Care Practices not covered by FTCA [25 U.S.C. § 1680u]	Traditional healthcare practices are not covered by the Federal Tort Claims Act	Allows tribal programs to provide traditional health care but provides that such services are not covered by the FTCA.
Sec. 832. Director of HIV/AIDS Prevention and Treatment [25 U.S.C. § 1680v]	Establishes a Director of HIV/AIDS Prevention and Treatment within the IHS	