

**Subpart F—Abortions and Related Medical Services in Indian Health Service Facilities and Indian Health Service Programs**

AUTHORITY: Sec. 1, 42 Stat. 208, (25 U.S.C. 13); sec. 1, Stat. 674, (42 U.S.C. 2001); sec. 3, 68 Stat. 674, (42 U.S.C. 2003).

SOURCE: 64 FR 58322, Oct. 28, 1999, unless otherwise noted.

**§ 36.51 Applicability.**

This subpart is applicable to the use of Federal funds in providing health services to Indians in accordance with the provisions of subparts A, B, and C of this part.

**§ 36.52 Definitions.**

As used in this subpart:

*Physician* means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery at an Indian Health Service or tribally run facility, or by the state in which he or she practices.

**§ 36.53 General rule.**

Federal funds may not be used to pay for or otherwise provide for abortions in the programs described in § 36.51, except under the circumstances described in § 36.54.

**§ 36.54 Life of the mother would be endangered.**

Federal funds are available for an abortion when a physician has found and so certified in writing to the appropriate tribal or other contracting organization, or Service Unit or Area Director, that “on the basis of my professional judgment the life of the mother would be endangered if the fetus were carried to term.” The certification must contain the name and address of the patient.

**§ 36.55 Drugs and devices and termination of ectopic pregnancies.**

Federal funds are available for drugs or devices to prevent implantation of the fertilized ovum, and for medical procedures necessary for the termination of an ectopic pregnancy.

**§ 36.56 Recordkeeping requirements.**

Documents required by § 36.54 must be maintained for three years pursuant to the retention and custodial requirements for records at 45 CFR part 74, subpart C.

**§ 36.57 Confidentiality.**

Information which is acquired in connection with the requirements of this subpart may not be disclosed in a form which permits the identification of an individual without the individual's consent, except as may be necessary for the health of the individual or as may be necessary for the Secretary to monitor Indian Health Service program activities. In any event, any disclosure shall be subject to appropriate safeguards which will minimize the likelihood of disclosures of personal information in identifiable form.

**Subpart G—Residual Status**

**§ 36.61 Payor of last resort.**

(a) The Indian Health Service is the payor of last resort for persons defined as eligible for contract health services under the regulations in this part, notwithstanding any State or local law or regulation to the contrary.

(b) Accordingly, the Indian Health Service will not be responsible for or authorize payment for contract health services to the extent that:

(1) The Indian is eligible for alternate resources, as defined in paragraph (c) of this section, or

(2) The Indian would be eligible for alternate resources if he or she were to apply for them, or

(3) The Indian would be eligible for alternate resources under State or local law or regulation but for the Indian's eligibility for contract health services, or other health services, from the Indian Health Service or Indian Health Service funded programs.

(c) *Alternate resources* means health care resources other than those of the Indian Health Service. Such resources include health care providers and institutions, and health care programs for the payment of health services including but not limited to programs under titles XVIII or XIX of the Social Security Act (*i.e.*, Medicare, Medicaid),

**Public Health Service, HHS**

**§ 36.104**

State or local health care programs, and private insurance.

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**Subpart H—Grants for Development, Construction, and Operation of Facilities and Services**

AUTHORITY: Secs. 104, 107, 25 U.S.C. 450h(b), 450k; Sec. 3, Pub. L. 93-638, 42 U.S.C. 2003.

SOURCE: 40 FR 53143, Nov. 14, 1975, unless otherwise noted.

**§ 36.101 Applicability.**

The regulations of this subpart are applicable to grants awarded pursuant to section 104(b) of Pub. L. 93-638, 25 U.S.C. 450h(b) for (a) projects for development including feasibility studies, construction, operation, provision, or maintenance of services and facilities provided to Indians and, (b) for projects for planning, training, evaluation or other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 103 of the Act. Such grants may include the cost of training personnel to perform grant related activities.

**§ 36.102 Definitions.**

As used in this subpart:

(a) *Act* means Title I of the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638 (88 Stat. 2203).

(b) *Indian* means a person who is a member of an Indian tribe.

(c) *Indian tribe* means any Indian tribe, band, nation, rancheria, Pueblo, colony or community, including any Alaska Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, Pub. L. 92-203 (85 Stat. 688 which is recognized as eligible by the United States Government for the special programs and services provided by the United States to Indians because of their status as Indians.

(d) *Tribal organization* means:

- (1) The recognized governing body of any Indian tribe; or
- (2) Any legally established organization of Indians which is:

(i) Controlled, sanctioned or chartered by such governing body or bodies; or

(ii) Democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

(e) *Secretary* means the Secretary of the Department of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

(f) *Grantee* means the tribe or tribal organization that receives a grant under section 104(b) of the Act and this subpart and assumes the legal and financial responsibility for the funds awarded and for the performance of the grant supported activity in accordance with the Act and these regulations.

(g) *Indian owned economic enterprise* means any commercial, industrial, or business activity established or organized for the purpose of profit which is not less than 51 percent Indian owned.

**§ 36.103 Eligibility.**

Any Indian tribe or tribal organization is eligible to apply for a grant under this subpart.

**§ 36.104 Application.**

(a) Forms for applying for grants are governed by 45 CFR part 74, subpart N.

(b) In addition to such other pertinent information as the Secretary may require, the application for a grant under this subpart shall contain the following:

(1) A description of the applicant including an indication whether the applicant is a Tribe or tribal organization, and if the latter:

(i) The legal and organizational relationship of the applicant to the Indians in the Area to be served or effected by the project.

(ii) A description of the current and proposed participation of Indians in the activities of applicant.

(iii) Whether applicant is controlled, sanctioned or chartered by the governing body of the Indians to be served, and if so, evidence of such fact.

(iv) If elected, a description of the election process, voting criteria, and