

ENTITY WITH JURISDICTION	INDIVIDUALS/GROUPS TO WHOM BENEFIT IS PROVIDED	FEDERAL LAW	MAINE (MCSA/MIA)	TASK FORCE RECOMMENDATIONS
Tribe	<i>Tribes and tribal citizens</i>	<p>Tribal law may require tribes to provide specific benefits to tribal citizens.<sup>1</sup></p> <p>Tribes may choose to administer federal services under the Indian Self-Determination and Education Assistance Act.<sup>2</sup> The Act allows tribes to establish contracts (also called “638 contracts”) with the federal government to administer services, including services provided under the Snyder Act (see footnote 22), services provided under the Indian Reorganization Act (see footnote 22), certain services provided by the United States Public Health Service, services administered by the Department of the Interior with funding from other agencies, services intended for the benefit of Indians because of their status as Indians and administered by the Department of Health and Human</p>	<p>The impact of the <i>Act to Implement the Maine Indian Claims Settlement</i> and the federal <i>Maine Indian Claims Settlement Act of 1980</i> on tribal administration of healthcare or social services is not clear.<sup>17</sup></p>	

<sup>1</sup> *Cohen’s Handbook of Federal Indian Law*, §22.01[3], at 1385 (Neil Jessup Newton ed., 2012).

<sup>2</sup> 25 U.S.C. §5301 *et seq.* (formerly codified at 25 U.S.C. §450 *et seq.*).

<sup>17</sup> On one hand, *Maine Indian Claims Settlement Act of 1980* specifically provides for Maine’s tribes to receive federal benefits and funding for federal services, at least where not abrogated in the Act itself. See 25 U.S.C. §1725(b)(3) (“Nothing in this section shall be construed to supersede any Federal laws or regulations governing the provision or funding of services or benefits to any person or entity in the State of Maine unless expressly provided by this subchapter.”) and 25 U.S.C. §1725(i) (“As federally recognized Indian tribes, the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be eligible to receive all of the financial benefits which the United States provides to Indians, Indian nations, or tribes or bands of Indians to the same extent and subject to the same eligibility criteria generally applicable to other Indians, Indian nations or tribes or bands of Indians.). On the other hand, 25 U.S.C. §1735(b) provides<sup>65</sup>, “The provisions of any Federal law enacted after October 10, 1980, for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine, including application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes, or bands of Indians, as provided in this subchapter and the Maine Implementing Act, shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine.”

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		<p>Services or the Department of the Interior.<sup>3</sup></p> <p>Self-determination contracts are subject to certain requirements, as outlined in the law itself.<sup>4</sup> However, the law provides that the federal government may only deny a contract under certain circumstances, including a finding by the Department of the Interior that the services to be rendered are unsatisfactory, that “adequate protection of trust resources” is not provided for, that the services contacted cannot be properly completed or maintained under the proposed contract, that the funds requested are in excess of allowable amounts, or that the services proposed are beyond the allowable scope.<sup>5</sup></p> <p>The Tribal Self-Governance Act<sup>6</sup> provided the opportunity for greater tribal autonomy and allows tribes to enter into an agreement, or compacts, with the federal government to administer programs handled by the Department of the Interior.<sup>7</sup> Tribes are able to enter into self-governance compacts with the Department of Health and Human Services to</p>		
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<sup>3</sup> 25 U.S.C. §5321(a)(1) (formerly codified at 25 U.S.C. §458aaa).

<sup>4</sup> 25 U.S.C. §5301 *et seq.* (formerly codified at 25 U.S.C. §450).

<sup>5</sup> 25 U.S.C. §5321(a)(2) (formerly codified at 25 U.S.C. §458aaa(a)(2)).

<sup>6</sup> 25 U.S.C. §5383 (formerly codified at 25 U.S.C. §458aaa).

<sup>7</sup> *Cohen’s Handbook of Federal Indian Law*, §22.02[3], at 1389 (Neil Jessup Newton ed., 2012); 25 U.S.C. §5381 *et seq.*

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		<p>administer Indian Health Services (IHS) programs.<sup>8</sup></p> <p>The law allows a limited number of tribes per year to enter into self-governance compacts.<sup>9</sup> In order to be eligible, tribes must have completed a required planning phase, requested participation by resolution or other action by the tribe’s governing body, and have demonstrated financial stability and management capacity for three fiscal years.<sup>10</sup></p> <p>Funding of self-determination contracts and self-governance compacts is subject to Congressional appropriations.<sup>11</sup></p> <p>Tribes are not able to self-administer programs described under the Social Security Act (including SSI) because these programs are not administered “for the benefit of Indians because of their state as Indians”.<sup>12</sup> However other programs, including TANF and child welfare, child support enforcement and adoption and foster services, have statutory language that allows for direct administration.<sup>13</sup></p> <p>Tribes may administer Supplemental Nutrition Assistance Program</p>		
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<sup>8</sup> *Cohen’s Handbook of Federal Indian Law*, §22.02[3], at 1390 (Neil Jessup Newton ed., 2012).

<sup>9</sup> 25 U.S.C. §5383(b)(1).

<sup>10</sup> 25 U.S.C. §5383(c)(1).

<sup>11</sup> 25 U.S.C. §5383(e) (self-governance compacts); 25 U.S.C. §5322(a) (self-determination contracts); see *Cohen’s Handbook of Federal Indian Law*, §22.02[5], at 1394 (Neil Jessup Newton ed., 2012),

<sup>12</sup> *Cohen’s Handbook of Federal Indian Law*, §22.06[2][b], at 1445-56 (Neil Jessup Newton ed., 2012) (citing former 25 U.S.C. §450f(a)(1)(E), currently codified at 25 U.S.C. §5321(a)(1)(E)).

<sup>13</sup> *Cohen’s Handbook of Federal Indian Law*, §22.06[2][b], at 1446 (Neil Jessup Newton ed., 2012).

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		<p>(SNAP) benefits (otherwise known as food stamps) if the Food and Nutrition Service of the United States Department of Agriculture (USDA) determines that the state is not properly handling program administration on a reservation and that the tribe has the ability to manage the program's administration.<sup>14</sup> The Special Supplemental Nutrition Program for Women Infants, and Children (WIC) allows for tribal administration.<sup>15</sup></p> <p>The Federal Tort Claims Act provides that the federal government is responsible for tort claims against tribes carrying out self-determination contracts and as such, the Attorney General will provide representation in such cases.<sup>16</sup></p>		
	<i>Non-tribal citizens</i>	<p>Tribes may provide certain healthcare services to non-tribal citizens. See Federal Section for additional information.</p>	<p><i>The Act to Implement the Maine Indian Claims Settlement</i> or the federal <i>Maine Indian Claims Settlement Act</i> does not appear to affect federal language regarding the delivery of healthcare or social services to non-tribal citizens, though see footnote 17.</p>	
State	<i>Tribes and tribal citizens.</i>	<p>Services provided by state governments must be nondiscriminatory, and states cannot exclude tribal citizens from receipt of services for which they would be</p>	<p>The Passamaquoddy Tribe, Penobscot Nation and Houlton Band of Maliseet Indians are eligible for state benefit</p>	

<sup>14</sup> *Cohen's Handbook of Federal Indian Law*, §22.06[3], at 1447 (Neil Jessup Newton ed., 2012).

<sup>15</sup> *Cohen's Handbook of Federal Indian Law*, §22.06[3], at 1447 (Neil Jessup Newton ed., 2012).

<sup>16</sup> *Cohen's Handbook of Federal Indian Law*, §22.02[4][a], at 1391 (Neil Jessup Newton ed., 2012) (citing former 25 USC 450f(d), currently codified at 25 U.S.C. §5321(d), and the Indian Appropriations Act, Pub. L. No. 101-512, §314, 104 Stat. 1915 (1990)).

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		eligible were they not tribal citizens. <sup>18</sup>  States administering federal programs may not restrict Indians' access to benefits due to their status as Indians. <sup>19</sup>	programs. <sup>20</sup> The tribes are also eligible for discretionary state grants or loans. <sup>21</sup>  Residents of Passamaquoddy and Penobscot territories or the Houlton Band Trust Land are eligible for state benefit programs. <sup>22</sup>	
Federal Government	<i>Tribes and tribal citizens</i>	The federal government has an obligation to provide certain services to tribal citizens. This obligation derives from treaties and other agreements, the inherent trust relationship that exists between tribal citizens and the federal government and federal law itself. <sup>23</sup> Courts have interpreted laws regarding this obligation liberally and have been critical of efforts to reduce or restrict services. <sup>24</sup> However, there have been cases in which the courts have	The impact of the <i>Act to Implement the Maine Indian Claims Settlement</i> and the federal <i>Maine Indian Claims Settlement Act</i> on tribal administration of healthcare or social services is not clear (see footnote 17).	

<sup>18</sup> *Cohen's Handbook of Federal Indian Law*, §22.01[3], at 1385 (Neil Jessup Newton ed., 2012) ("Indians therefore have a right to state services on the same terms as other state citizens. Indians may not be excluded from state services because of their special trust relationship with the federal government, because they live on tax-exempt land, or because they are entitled to federal services).

<sup>19</sup> *Cohen's Handbook of Federal Indian Law*, §22.06[2][a], at 1444 (Neil Jessup Newton ed., 2012) (citing *Morton v. Ruiz*, 415 U.S. 199 (1974)).

<sup>20</sup> *An Act to Implement the Maine Indian Claims Settlement*, 30 M.R.S.A. §6211(1) ("The Passamaquoddy Tribe, the Penobscot Nation and Houlton Band of Maliseet Indians are eligible for participation and entitled to receive benefits from the State under any state program that provides financial assistance to all municipalities as a matter of right. Such entitlement must be determined using statutory criteria and formulas generally applicable to municipalities in the State."). See 30 M.R.S.A. §6211(1)-(2) (describing funding calculations).

<sup>21</sup> *An Act to Implement the Maine Indian Claims Settlement*, 30 M.R.S.A. §6211(3).

<sup>22</sup> *An Act to Implement the Maine Indian Claims Settlement*, 30 M.R.S.A. §6211(4) ("Residents of the Indian territories or Houlton Band Trust Land are eligible for and entitled to receive any state grant, loan, unemployment compensation, medical or welfare benefit or other social service to the same extent as and subject to the same eligibility requirements applicable to other persons in the State as long as in computing the extent to which any person is entitled to receive any such funds any money received by such person from the United States within substantially the same period of time for which state funds are provided and for a program or purpose substantially similar to that funded by the State is deducted in computing any payment to be made by the State.").

<sup>23</sup> *Cohen's Handbook of Federal Indian Law*, §22.01[3], at 1384 (Neil Jessup Newton ed., 2012). Relevant federal laws include Snyder Act (25 U.S.C. §13), which directs the Bureau of Indian Affairs to "direct, supervise and expend" funds for healthcare and other services for Indians, and the Indian Health Care Improvement Act or IHCA (25 U.S.C. §1601 *et seq.*).

<sup>24</sup> *Cohen's Handbook of Federal Indian Law*, §22.01[3], at 1384 (Neil Jessup Newton ed., 2012; See *Morton v. Ruiz*, 415 U.S. 199 (1974); *McNabb v. Bowen*, 829 F.2d 787, 792 (9<sup>th</sup> Cir. 1987); and *State of Arizona v. United States*, 657 F.2d 1479 (9<sup>th</sup> Cir 1988).

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		<p>allowed for redistribution of resources and for attenuation of services when similar services are available via other means.<sup>25</sup></p> <p>Aside from healthcare<sup>26</sup>, other services specific to Indians provided for under federal law include:</p> <ul style="list-style-type: none"> <li>• general assistance,</li> <li>• a work experience program for those receiving general assistance,</li> <li>• employment assistance and vocational training,</li> <li>• burial assistance,</li> <li>• disaster and emergency assistance,</li> <li>• adult care supports, and</li> <li>• social and protective services for children, the elderly and families.<sup>27</sup></li> </ul> <p>Tribal citizens are also eligible for federal programs such as Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI) and other supports.<sup>28</sup>.</p>		
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<sup>25</sup> *Cohen's Handbook of Federal Indian Law*, §22.01[3], at 1384 (Neil Jessup Newton ed., 2012) (citing *Vigil v. Andrus*, 667 F.2d 931 (10<sup>th</sup> Cir 1982), in which the court determined that the BIA could transfer its school lunch program, which had provide free school lunch to all Indian children, to the United States Department of Agriculture, which provided lunches only to children with demonstrated need, and *Lincoln v. Vigil* 508 U.S. 182 (1993), in which the Court determined that the Indian Health Service could discontinue certain clinical services so as to direct resources to a broader group of Indians).

<sup>26</sup> See the Indian Health Care Improvement Act or IHCIA (25 U.S.C. §1601 *et seq.*). Because the IHCIA was authorized as part of the Affordable Care Act, its future is uncertain given ongoing litigation. See *Texas v. United States*, 340 F. Supp. 3d 579 (N.D. Tex. 2018).

<sup>27</sup> *Cohen's Handbook of Federal Indian Law*, §22.06[1], at 1443 (Neil Jessup Newton ed., 2012), citing 25 C.F.R. §20.300-20.319 (general assistance), 25 C.F.R. §20.320-20.323 (work experience), 25 C.F.R. Pts. 26 and 27 (employment assistance and vocational training), 25 C.F.R. §20.324-20.327 (burial assistance), 25 C.F.R. §20.327-20.330 (disaster and emergency assistance), 25 C.F.R. §20.331-20.335 (adult care), 25 C.F.R. §20.400-20.516 (social and protective services)).

<sup>28</sup> *Cohen's Handbook of Federal Indian Law*, §22.06[2][a], at 1444, (Neil Jessup Newton ed., 2012).

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	<p><i>Non-tribal citizens</i></p>	<p>IHS services may be provided to the following non-tribal citizens:</p> <ul style="list-style-type: none"> <li>• children of tribal citizens who are under age 19<sup>29</sup>;</li> <li>• spouses of tribal citizens, if the tribe determines, through resolution of the tribal governing body, that spouses as a class are eligible<sup>30</sup>;</li> <li>• individuals in need of emergency stabilization or individuals to whom provision of services is necessary to prevent the spread of communicable disease or to deal with a public health threat;<sup>31</sup></li> <li>• non-Indian women pregnant with the child of an eligible Indian;<sup>32</sup> and</li> <li>• family members of an eligible Indian if the care is directly related to the treatment of the eligible individual.<sup>33</sup></li> </ul>	<p><i>The Act to Implement the Maine Indian Claims Settlement or the federal Maine Indian Claims Settlement Act</i> does not appear to affect federal language regarding the delivery of healthcare or social services to non-tribal citizens, though see footnote 17.</p>	
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<sup>29</sup> 25 U.S.C §1680c(a).

<sup>30</sup> 25 U.S.C §1680c(b).

<sup>31</sup> 25 U.S.C §1680c(d).

<sup>32</sup> 25 U.S.C §1680c(d).

<sup>33</sup> 25 U.S.C §1680c(d).