



NATIONAL INDIAN HEALTH BOARD

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TO: 437 National Steering Committee members

FROM: Kitty Marx, Legislative Director
National Indian Health Board

SUBJECT: Summary of National Steering Committee conference call - December 19

On December 19, 2006, a staff member of the Senate Committee on Indian Affairs participated on a National Steering Committee (NSC) conference call to hear tribal priorities of provisions to be included in any Indian Health Care Improvement Act (IHCIA) reauthorization bill introduced in the 110th Congress. As reported previously, Senators McCain, Dorgan, Enzi, and Murkowski introduced S. 4122 (a bill to amend the IHCIA) in the last hours of the 109th Congress. S. 4122 reflects last minute changes to the IHCIA that were made to address the Department of Justice and Republic Steering Committee concerns.

The following is the NSC's recommendations regarding new language added to the following provisions in S. 4122:

Section 213: S. 4122 modified the definition of 'home and community based services' by deleting certain services such as "personal care services" and "training for family services." The definition was further modified to authorize the provision of "home and community based services" to those services "for which the Secretary has established standards"

Recommendation of the NSC: The NSC recommended that the definition of "home and community based services" should be no more narrow than what Medicaid programs currently cover and the authority to provide services should not be dependent on the Secretary having to establish standards. The SCIA staffer indicated she would work on developing language with legislative counsel to address the NSC's recommendations. We are hopeful that Ms. Darcy will allow the NSC to review legislative counsel's draft.

Section 314: Tribal Management of Federally owned quarters:

S. 4122 revised section 314 (a) to require that rental rates for quarters be established according to the guidelines in OMB Circular A-45.

Recommendation of the NSC: The reference to OMB Circular A-45 defeats the purpose of the section which was intended to provide tribes with flexibility to set rental rates based on reasonable values in their local communities. The NSC recommended deleting the new language in S. 4122.

Section 805: Limitations

S. 4122 revised Section 805, by adding a new subsection (b) that would allow the Secretary to promote traditional health care practices, but would exclude FTCA coverage of traditional health care services.

Recommendation of the NSC: The NSC discussed that it was understood that the language in 805(b) was a result of a compromise with the Department of Justice. However, it is not clear whether the compromises made in the 109th Congress would continue into the 110th. With the understanding that the NSC might need to revisit the issue, it was the NSC recommendation to delete subsection (b) because it is a regression from current law.

Section 814: Bipartisan Commission on Indian Health

Section 814 was revised to include language to require the commission to study underutilization/over utilization rates by Indians as well as to study potential incentives to spend health care resources prudently, and to study achieving personal responsibility of Indians, or a more direct role of Indians, in their personal health care management and decisions.

Recommendation: The NSC recommended deletion of this new language because the references to "personal responsibility" are buzz words for the Republican Steering Committee's position that Indian people should pay for their health care. Some participants on the call discussed the possibility that section 814 (bipartisan commission) might need to be deleted in its entirety. Since the initial intent of sec. 814 -- to study making Indian health funding an **entitlement** -- has been removed, what remains in 814 is of little value, and, more importantly, the continued existence of the provision may be a "magnet" for objectionable amendments such as the "personal responsibility" idea.

In addition to the new provisions in S. 4122, the NSC discussed other priority provisions deleted from S. 1057 during the 109th Congress and the NSC recommended reinserting the following provisions:

Section 601: Per previous NSC conference calls, the NSC recommended that the language elevating the Director of IHS to Assistant Secretary of Health be reinserted.

Section 124 (b): The exemption of NHSC scholars from NHSC and IHS FTE limitations was deleted. No one on the call knew why this language had been deleted.

Recommendation: The NSC recommended that the exemption in section 124(b) be reinserted.

Section 302 (c)(5): The provision to allow tribes to use appropriated dollars to pay back loans acquired through other federal loan programs was deleted due to objections that federal appropriations should not be used to pay back federal loans. However, participants on the call explained, for example, that the USDA has loan money available for tribes to construct sanitation facilities, but tribes cannot access these funds because they do not have the resources to pay back these loans.

Recommendation: Reinsert this provision into the bill. Also, S. 4122 revised section 302 by adding a new provision at 302 (c)(9) to clarify that goods and services from other sources can be used for all related costs associated with sanitation facility construction. The NSC had no objection to this new provision.

Section 403: S. 1057 and S. 4122 currently provide that the IHS and tribes have a right of recovery from third parties for “reasonable expenses incurred.” During the 109th Congress, the tribes requested to change this language to “reasonable charges billed” because some tribes have encountered problems with insurance companies not reimbursing the tribes because of the “expenses incurred” language.

Recommendation: The NSC recommended that the “reasonable expenses incurred and billed” language in section 403(a) be changed to “reasonable charges billed” if there were no major objections to the change. The SCIA staffer will check with staff members of the HELP committee to see if there are objections.

The NSC recommended that section 403 be further amended to clarify that tribes, operating 638 programs, have authority to recover under the Federal Medical Care Recovery Act (FMCRA) on the same basis as the federal government. Carol Barbero is currently working on draft language and will share the language with the NSC.

Title IV: The NSC recommended that Title IV will need to be revised to include language that the requirements of title IV do not apply to certain insurance products offered by AFLAC. [These insurance products are not primary health insurance coverage but supplemental products paying cash benefits to the policy holder and not considered third party resources.] During the 109th Congress, the NSC had discussed AFLAC’s proposed language and had determined that the right of recovery and payor of last resort rule authorities in section 403 and 407 would not be adversely impacted by what AFLAC requests. In return, the NSC would obtain AFLAC support of the bill. The following language is what AFLAC and the NSC had previously agreed to:

Sec. 415 General Exceptions. The requirements of title IV shall not apply to any excepted benefits described in paragraphs (1)(A) and (3) of section 2791 (c) of the Public Health Service Act.

Current section 415 (Authorization of Appropriations) would be renumbered to section 416.

If you have any questions regarding this document or other questions regarding the IHCIA, please contact Kitty Marx, Legislative Director, NIHB, on 202-742-4328 or at kmarx@nihb.org.