AMERICAN INDIAN/ALASKA NATIVE SPECIFIC PROVISIONS

PATIENT PROTECTION AND AFFORDABLE CARE ACT

*As Congress develops a path forward on healthcare reform, we recommend that these specific provisions are preserved so the Indian health system can continue to operate in a health system that is representative of the 21st century and honors the United States federal trust responsibility to provide healthcare to AI/ANs.*

The Indian Health Care Improvement Act (IHCIA) amendments enacted in Section 10221 of the Affordable Care Act (ACA), as well as several other beneficial Tribal provisions enacted as part of the ACA, are separate and distinct from the ACA and must be preserved to ensure that the Indian health delivery system remains viable. Repealing the IHCIA amendments and the other Tribal related provisions enacted as part of the ACA would have devastating impacts on both the health of American Indian and Alaska Natives (AI/ANs) and the Indian health system that serves them.

The IHCIA has been reauthorized and amended a number of times since 1976, with extensive substantive amendments enacted in 1992 to strengthen its programmatic provisions. Although the IHCIA was permanently reauthorized as part of the ACA in 2010, the IHCIA far predates the ACA and should be treated separately. The IHCIA is clearly and easily severable from the ACA because it solely relates to the Federal trust responsibility to provide health care to Indian tribes and their members. It is critical that the things that tribal health programs fought for so long, be kept intact in order to provide health care services to AN/AI people. The IHCIA amendments and related Tribal provisions were developed over a period of ten years in a separate legislative process from the ACA. In order to escape a legislative log jam, the Indian-specific provisions were put into the Senate’s health care reform bill that became the ACA because it was a moving legislative vehicle. They were not part of or related to the overall Act or other integral pieces of the general health reform legislation. In addition to the IHCIA amendments, other key tribal provisions enacted as part of the ACA but unrelated to it include:

**Section 2901(b)** **Payor of Last Resort.** This very beneficial provision requires that when an IHS eligible Indian beneficiary is covered by another health program (any Federal, state, local health program, or private insurance) it is required to pay. Maintaining the payer of last resort provides authority for Indian health programs to seek primary reimbursement from other sources and saves scarce Indian health care resources that can be utilized to provide additional health care services.

**Section 2901(c)** **Facilitating Enrollment of Indians under the Express Lane Option.** This provision defines Indian health programs as Express Lane Agencies and allows them to conduct simplified eligibility determinations and facilitate enrollment in Medicaid and CHIP for Indians seeking services from Indian providers.

**Section 2902** **Elimination of Sunset for Reimbursement for all Medicare Part B Services Furnished by Certain Indian Hospitals and Clinics** – This provision was originally included in the IHCIA and attached as an amendment in the Medicare Modernization Act (MMA). This addressed an issue with creditable services definitions that left Indian hospitals unable to bill for all Medicare part B services. The MMA amendment was limited to five years and was made permanent in the ACA. Approximately 10% of AI/ANs who use IHS services are enrolled in Medicare, with approximately 30% of this population requiring Part B coverage due to such issues as end-stage renal disease or disability. Medicare Part B coverage is an essential resource that ensures that Indian providers save money on costly Part B services.

**Title IX, Section 9021** **Exclusion of Health Benefits Provided by Indian Tribal Governments as Taxable Income** - The provision clarifies that the value of "health services" or "health benefits" received by AI/ANs—whether provided or purchased by the IHS, Tribes, or Tribal organizations—are excluded from gross income because it supplements the programs and services provided by the federal government. Tribes often supplement inadequate health care funding by paying for health care services for their Tribal members, or by purchasing insurance coverage for them (e.g. Medicare Part B, Part D, or private insurance). Section 9021 was enacted in order to resolve a longstanding dispute Tribes had with the IRS over whether the provision of health care services, including the purchase of insurance for Tribal members, should be included as gross income for that Tribal member. Before Section 9021 was enacted, however, IRS field auditors had taken the position that the value of such coverage should be included in taxable income for Tribal members.

These provisions are entirely unrelated to the ACA as a whole, but like the IHCIA were enacted as part of the ACA because it was a moving legislative vehicle. Repealing the IHCIA along with these other Tribal provisions would have disastrous consequences for the Indian health system. The Indian health system would lose critical third party revenue, legal authorities, and life-saving programs.