

National Indian Health Board



July 1, 2010

Dr. Yvette Roubideaux, MD, MPH
Director
Indian Health Service
801 Thompson Ave, Suite 440
Rockville, MD 20852

Mr. Paul Dioguardi
Director
Health and Human Services Intergovernmental Affairs

Dear Dr. Roubideaux and Mr. Dioguardi:

As Chairman of the National Indian Health Board (NIHB), I am submitting comments in response to your letter dated May 12, 2010 initiating a formal tribal consultation on implementation of the Patient Protection and Affordable Care Act (Affordable Care Act) and the Indian Health Care Improvement Act (IHCIA). This letter provides general responses to your questions. In addition, I will like to refer you also to the joint response letter that NIHB submitted with the Centers for Medicare and Medicaid Tribal Technical Advisory Group (TTAG) and the Medicare and Medicaid Policy Committee (MMPC) that contains more responses that are technical in nature.

The NIHB appreciates the efforts of the Administration to engage with Tribes on provisions in the Affordable Care Act and the IHCIA. Certainly, this law will have tremendous impacts on American Indians and Alaska Natives (AI/AN) as well as the Indian health delivery system. The Administration has made tremendous efforts to engage the Tribes in consultation, ensuring that the government-to-government relationship is recognized.

Implementation Priorities

1. Implementation Priorities for the IHCIA

The Federal government has a trust responsibility to members of Federally-recognized Indian Tribes. This responsibility should place a priority for implementation of the AI/AN provisions in the Affordable Care Act and the IHCIA.

While Tribes, the NIHB and other organizations may highlight certain provisions as priorities during Tribal consultation, it does not demonstrate that other provisions are not considered important or that Indian Country would support the delayed implementation of certain provisions. Indian Country has been working for more than ten years to reauthorize the Indian



Health Care Improvement Act.

Provisions without a specific timeline for action or implementation or do not require the Administration to engage in a rule making process should be considered effective immediately. The HHS and IHS should demonstrate which provisions cannot be implemented immediately, and convey to Tribal leaders what is required to implement a provision.

Furthermore, as Tribes determine their priorities for implementing specific provisions, it would benefit the Tribes to have an idea of how the need for additional funds will or will not affect the implementation of the law. For example, if particular provisions require additional appropriations, this should be something that is communicated by the HHS and IHS.

The NIHB is aware of a simultaneous process of developing budget priorities for the IHCA for Fiscal Year 2012 through the budget formulation workgroup, and while the workgroup can provide guidance on budget priorities for the IHCA, the IHS should not view the recommendations of the workgroup in lieu of a full tribal consultation with input from all Tribes.

2. Implementation Priorities of the Affordable Care Act

The NIHB recognizes the need for the Administration to review and interpret the Affordable Care Act, and to develop a coordinated plan for implementation. The Affordable Care Act includes provisions that are meant to protect and enhance the Indian health system through overall health care reform initiatives, whereas the provisions of the IHCA have been developed through a consensus process with Indian Country. Tribal leaders may not be as familiar with provisions of the Affordable Care Act. It is appropriate for the Federal government to educate Tribal leaders about what the Affordable Care Act will mean for the Indian health care system on an ongoing basis.

An important issue that needs to be addressed for Tribal leaders during consultation on the Affordable Care Act is which provisions could be implemented on a short term basis and which provisions are subject to a particular timeline. This will affect how tribal leaders determine their priorities for implementation and will improve the consultation process.

To demonstrate this issue, two provisions will be highlighted:

- i. Section 2901(b) Payor of last resort, providing that the IHS and Tribes are the payers of last resort for services provided to Indians through other federal programs.
- ii. Section 1411(b)(5)(A) exempts individual Indians from a penalty under the individual mandate due to their status as an Indian, whom must provide such information as the Secretary prescribes to qualify for the exemption.

The mandate for individuals to maintain health insurance does not take effect until 2014. Thus, the exemption provided in Section 1411(b)(5)(A) will not be a provision that needs immediate



implementation. Section 2901(b) has the potential to be a more immediate priority because there is no specific timeframe for this provision to be implemented.

The consultation and implementation process could be improved if Tribal leaders knew which provisions in the Affordable Care Act could be implemented sooner rather than later. Additionally, if specific provisions require the promulgation of regulations, tribal representation must be accommodated in any such process.

Ongoing Consultation

The second question posed in the May 12, 2010 letter concerned ongoing consultation. The need for ongoing consultation is critical, as this helps Tribes identify and recommend additional priorities or concerns with implementation.

The NIHB suggests a multi-pronged approach to ongoing consultation. During the 2010 HHS Tribal Consultation and Budget Formulation, Secretary Sebelius announced the creation of a Secretary-level Tribal Advisory Council. This entity or a committee similar to type of entity is appropriate to provide continued counsel on implementation, as it would be composed of Tribal leaders and could deal with various HHS agencies. Furthermore, a subcommittee could also be established that would provide guidance on implementation of the IHCA specifically, and could report to the overall council and to the Director of the Indian Health Service. Utilizing this existing council will allow the HHS to hear directly from Tribes and for Tribes to engage the HHS at the Secretary level during an ongoing consultation.

The second recommendation for ongoing consultation is to conduct face-to-face consultation sessions throughout the country specifically on the IHCA and Affordable Care Act. This presents the IHS and HHS an opportunity to hear from many tribal leaders in a single setting, as well as for Tribal leaders to learn about common concerns or recommendations regarding implementation.

Thank you for allowing the NIHB to submit comments. The NIHB looks forward to working with the HHS and IHS during implementation and coordinating information and resources between Federal agencies and Indian Country. If you have any questions regarding these comments, please contact Stacy Bohlen, Executive Director, at 202-507-4070.

Yours in health,



Reno Keoni Franklin
Chairman
National Indian Health Board

