January 22, 2007

TO: 437 National Steering Committee members

FROM: Kitty Marx, Legislative Director
National Indian Health Board

SUBJECT: Summary of National Steering Committee conference calls held January 16 and January 19, 2007

On January 16, 2007, a staff member of the Senate Committee on Indian Affairs (SCIA) participated on a National Steering Committee (NSC) conference call to review a draft Indian Health Care Improvement Act (IHCIA) reauthorization bill that the SCIA expects to introduce in the 110th Congress. The draft bill is still being vetted through the Finance and Health, Education, Labor and Pension committees.

The following is a summary of those provisions to be included in the reauthorization bill. Nearly all of the NSC’s recommendations from the December 19th NSC conference call were included.

**Definition of Health Promotion and Disease Prevention:** S. 4122 deleted “reproductive health and family planning” from the definition of health promotion and disease prevention activities. The SCIA will reinsert this language.

**Section 104: Scholarship Program: Service Obligation:** S. 4122 revised the service obligation of scholarship recipients to equal one year for every year of scholarship support received, or two years, whichever is greater. The SCIA retained the S. 4122 language. **Waivers:** S. 4122 revised this section to clarify that it is the Secretary’s authority to waive services obligations, but the factors considered in reaching that decision will include consultation with the affected I/T/U program. The SCIA retained the revisions found in S. 4122.

**Section 124 (b) National Health Service Corps:** The exemption of NHSC scholars from NHSC and IHS FTE limitations when serving as a commissioned corps officer in a T/U program was deleted in S. 4122. The SCIA will reinsert this language.
Section 127 Scholarship funds and taxable income: The SCIA intend to include a provision to clarify that Title I scholarship funds are not taxable income. A similar provision was included in S. 556 (108th Congress).

Section 201 Indian Health Care Improvement Fund: The SCIA intend to clarify the use of funds for injury prevention programs to include additional activities such as: data collection and evaluation, demonstration projects, training and capacity building.

Section 213 Home and community based services: The SCIA indicated that section 213 is still under development. The SCIA is trying to reach a balance by including some standards to accommodate the Department of Justice concerns while expanding the services to be consistent with Medicaid services per the recommendation of the NSC.

Section 302 (c)(5) and (c)(9) Sanitation Facilities: S. 4122 deleted the provision to allow tribes to use appropriated dollars to pay back loans acquired through other federal loan programs due to objections that federal appropriations should not be used to pay back federal loans. The SCIA will reinsert this provision. In addition, the SCIA will retain section 302 (a) (9), a provision from S. 4122 that would allow the IHS to accept contributions to pay for sanitation facilities construction projects support activities.

Section 306 Indian Health Care Delivery Demonstration Project: The SCIA updated this section that lists several demonstration construction projects by deleting those demonstration projects that have been completed.

Section 314 Tribal Management of Federally owned quarters: S. 4122 included additional language to require tribes in determining rental rates to use the guidelines found in OMB Circular A-45. This reference to A-45 defeats the purpose of section 314. The SCIA will delete the reference to OMB Circular A-45.

Section 403 Reimbursement from Certain Third Parties: 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. The SCIA will modify section 403(a) to “reasonable charges billed”.

Federal Medical Care Recovery Act: 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. The SCIA will include the language recommended by the NSC as a new paragraph in section 403.

Title IV: The NSC recommended that Title IV be revised to include language that the requirements of title IV do not apply to certain insurance products. [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.] The SCIA would include the following provision in the reauthorization bill: *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.*

**Section 509 Facilities:** The SCIA intend to modify this provision to clarify that if a feasibility study to establish a loan fund is conducted, that a report should be submitted to Congress.

**Section 601 Establishment of Indian Health Service:** Per previous NSC conference calls, the NSC recommended that the language elevating the Director of IHS to Assistant Secretary of Health be reinserted. The SCIA indicated that this provision will be included and has made conforming amendments to the definition section by deleting the term “Director” and other conforming amendments in the bill.

**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. The SCIA will delete this language.

**Section 814: Bipartisan Commission on Indian Health:** S. 4122 revised Section 814 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. The SCIA will delete this language.

There were three sections of the bill that required follow up by the NSC. A conference call was held on January 19th to discuss these follow up items.

**Section 817 Confidentiality of Medical Quality Assurance Records; Qualified Immunity for Participants:** The SCIA indicated that they intended to include a new section 817 that would provide protection of peer review documents. This provision was included in S. 556, (108th Congress), but was deleted due to objections from the Administration. The SCIA asked the NSC if there were objections to including this provision.

On the January 19th conference call, the NSC discussed this provision but determined that it needed more information. First, what version of section 817 (Senate or House from the 108th) will be included? Secondly, Section 817 was deleted in the 108th due to the Patient Safety Act enacted in 2005. In light of this Act, is section 817 still needed? If so, what are the implications of section 817, if the IHCIA is enacted, to the protections found in the Patient Safety Act. Although there did not appear to be an objection to this provision being included, more information is still required.

**Section 301 Consultation, Construction and Renovation of Facilities:** Participants on the January 16 NSC call raised the issue of revising the section 301 “grandfather” provisions that were modified by the HELP committee in the 109th Congress. Because this issue had not been previously discussed with the NSC, the issue was tabled until the January 19th conference call.

On the January 19th conference call, the NSC discussed proposed language submitted to the NSC based on recommendations from some members of the Facilities Advisory Board (FAAB). After much discussion, it was suggested that an ad hoc subcommittee be formed to discuss the matter
further. The subcommittee will include: Jim Roberts, Dr. McKenzie, Anslem Roanhorse, Roz Begay, Randall Simmons, and Kitty Marx and Carol Barbero as technical legislative drafters.

**Section 713 Child Sexual Abuse and Prevention Treatment Programs:** The SCIA asked whether there should be a reference to the Indian Child Protection and Family Violence Act in this section since the authorization for that Act lapsed in 2006. The NSC did not discuss this issue due to time limitations.

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.
Section 213 Home and community based services: The NSC supports revising section 213 to include some standards to accommodate the Department of Justice concerns but recommends that the authorized services be consistent with Medicaid reimbursable services.

Section 301 Consultation, Construction and Renovation of Facilities: Participants on the January 16 NSC call raised the issue of revising the section 301 "grandfather" provisions that were modified by the HELP committee in the 109th Congress. Because this issue had not been previously discussed with the NSC, the issue was tabled until the January 19th conference call.

On the January 19th conference call, the NSC discussed proposed language submitted to the NSC based on recommendations from some members of the Facilities Advisory Board (FAAB). It was suggested that an ad hoc subcommittee be formed to discuss the matter further and possibly draft legislative language for the NSC to consider. However, before any legislative language could be drafted, the NSC had to make a policy decision to either retain current language in S. 4122 or revise the language. After much discussion at the NSC meeting, the NSC made a decision to recommend retention of the current grandfathering language in section 301(c)(1)(D) of S. 4122.

Section 302 (c)(5) and (c)(9) Sanitation Facilities: S. 4122 deleted the provision to allow tribes to use appropriated dollars to pay back loans acquired through other federal loan programs due to objections that federal appropriations should not be used to pay back federal loans. The NSC recommends reinserting this provision. In addition, the NSC recommends retaining section 302 (a) (9), a provision from S. 4122 that would allow the IHS to accept contributions to pay for sanitation facilities construction projects support activities.

Section 306 Indian Health Care Delivery Demonstration Project: The NSC supports this section being updated to delete those demonstration projects that have been completed.

Section 314 Tribal Management of Federally owned quarters: S. 4122 included additional language to require tribes in determining rental rates to use the guidelines found in OMB Circular A-45. This reference to A-45 defeats the purpose of section 314. The NSC recommends deleting the reference to OMB Circular A-45.

Section 403 Reimbursement from Certain Third Parties: 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. The NSC recommends modifying section 403(a) to "reasonable charges billed."

Federal Medical Care Recovery Act: The NSC recommended that section 403 be 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.

Title IV: The NSC recommended that Title IV be revised to include language that the requirements of title IV do not apply to certain insurance products. [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.] The NSC recommends the following provision be included as a separate section in the reauthorization bill: 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.
Section 509 Facilities: The NSC supports modification of this provision to clarify that if a feasibility study to establish a loan fund is conducted, that a report should be submitted to Congress.

Section 601 Establishment of Indian Health Service: The NSC recommends that the language elevating the Director of IHS to Assistant Secretary of Health be reinserted and that conforming amendments be made to the definition section by deleting the term “Director” and other conforming amendments in the bill.

Section 713 Child Sexual Abuse and Prevention Treatment Programs: The NSC supports including a reference to the Indian Child Protection and Family Violence Act (ICPA) in section 713. The authorities in section 713 and the ICPA are similar and should be coordinated by making reference in the IHCIA.

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. The NSC recommends deleting this language.

Section 811: Moratorium: The NSC recommends amending this provision to clarify that before eligibility regulations promulgated will not become effective until the IHS submits a budget request to reflect the increased costs of any new regulations and such budget request has been included in an appropriations Act and enacted into law.

Section 812: Tribal Employment: The NSC accepts deletion of this section.

Section 814: Bipartisan Commission on Indian Health: S. 4122 revised Section 814 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. The NSC recommends deleting this language.

Section 817 Confidentiality of Medical Quality Assurance Records; Qualified Immunity for Participants: The NSC recommends including a provision that would provide protection of peer review documents. The NSC supports inclusion of the same language that was in S. 556 and H.R. 2440, (108th Congress), that had been deleted due to objections from the Administration.

The only remaining issue is a proposal to establish a new health care delivery model, consistent with the private sector, to address the lack of health professionals available “after-hours.” It was the consensus of the NSC that the IHS and tribal programs have existing authority to extend its hospital and ambulatory care clinic hours but the problem is a matter of funding. Consistent with the NIHB budget testimony, the NIHB and the NSC is willing to work with the Congressional committee staff to identify existing authorities or to modify existing provisions in the IHCIA if necessary.
January 22, 2007

Summary of the 437 National Steering Committee to Reauthorize the Indian Health Care Improvement Act:

The following is a summary of the 437 National Steering Committee (NSC) conference calls held from July 2006 to January 2007. The NSC is co-chaired by Rachel Joseph, Lone Pine Paiute Tribe and Buford Rolin, Vice Chair, National Indian Health Board (NIHB) and Chairman of the Poarch Band Creek of Indians. The NIHB supports the NSC by coordinating and scheduling weekly or bi-weekly conference calls, as needed. The NIHB also distributes background information and documents in preparation of the calls and records major decisions and recommendations of the NSC. The NIHB also supports the NSC by scheduling Congressional hill visits for Tribal leaders.

A face to face meeting of the NSC is scheduled for February 15, 1- 5 pm, and February 16, 9 – 3 pm at the Crystal Gateway Marriott. By the date of this meeting, it is expected that the Senate reauthorization bill will have been introduced in the 110th Congress. The purpose of the February NSC meeting will be to review the IHiCIA reauthorization legislation and discuss any additional provisions or modifications to the bill as appropriate. Many of the tribal leaders on the NSC have not participated in the conference calls and there might be a need to identify new tribal representatives to the NSC. The February NSC meeting will be an opportunity to update the tribal representatives to the NSC, see attached list of current members.

July 27 – September 19, 2006

The NSC met via conference call to discuss revisions to the bill, S. 1057, that were being suggested by the Health, Education, Labor, and Pensions (HELP) committee, chaired by Sen. Enzi (R-WY). Some of the major issues included revisions to section 301 (health care facility priority system), national cancer screening standards, negotiated rulemaking provisions, use of appropriated dollars to pay tribal loans, and long term care and home and community based care services.

September 15, 2006: S.1057 is hotlined

S. 1057 was “hotlined” for unanimous consent, but holds were placed on the bill by the Republican Steering Committee and Senator Coburn (R-OK).
September 29, 2006  A Department of Justice (DOJ) White Paper objecting to S. 1057 was released to the Republican Steering Committee. Due to the DOJ White Paper, the holds were not released by the time Congress recessed on September 29.

October 10 – 13, 2006  At the NIHB Annual Consumer Conference, the NIHB passes a Board resolution requesting the Attorney General to withdraw the DOJ White Paper. Over 200 signatures are collected in support of this resolution. The NIHB sent the resolution and signatures to the Attorney General and President Bush.

November 20, 2006  Tribal leaders, Linda Holt, Jefferson Keel, and Rachel Joseph, attend meeting with Rueben Barrales, Deputy Assistant to President Bush, to express concerns regarding the Administrations objections to the IHClA.

October–November 2006  The NSC committee met to discuss the Republican Steering Committee (RSC) and DOJ objections to the bill. The major RSC and DOJ objections included: definition of Indian, Medicaid cost sharing exemptions, FTCA coverage of Traditional health care practices and long term/home and community based services, and increase in direct spending.

November 7th Elections  As a result of the November 7th elections, both the Senate and House will be under Democratic control.

December 6  HHS issues comments and objections to S. 1057

December 8  S. 4122 introduced by Senators McCain, Dorgan, Enzi, and Murkowski reflecting last minute changes to S. 1057 to attempt to accommodate DOJ/HHS concerns

December 15th and 19th Discussion of draft reauthorization bill for the 110th Congress  The NSC discussed with Congressional committee staff those provisions of the IHClA that needed to be deleted, revised, or reinserted into any reauthorization bill introduced in the 110th Congress. NSC made recommendations to Congressional committee staff, see attached December 19th memorandum.

January 16th and 19th Overview of draft reauthorization bill by committee staff to NSC  The NSC met with Congressional committee staff who reviewed the draft reauthorization bill with the NSC. The NSC recommendations were incorporated into the bill as well as other provisions responsive to tribal concerns. A January 19th NSC only conference call was held to follow up on issues.

Attached to this document is a detailed summary of the conference calls held December 15th and 19th, and January 16th and 19th.