



UNITED SOUTH AND EASTERN TRIBES, INC.
Health Care Reform
Position Document
June 4, 2009

A. Issue: Health Care Reform in Indian Country: The legislative effort to improve access to health care for many millions of uninsured or underinsured Americans will, without question, impact the Indian health system through which health care is now delivered to some 1.9 million American Indians/Alaska Natives (AI/ANs). The Indian health system is unique in that it was created and designed by the Federal government to carry out the Federal trust responsibility for Indian health. In addition, Federal policy dictates that the Federal Government interact with Indian Tribes on a government-to-government basis. Tribes must be viewed as partners with the Federal government in the national effort to reduce costs, guarantee provider choice, and ensure access to affordable quality healthcare for all.

The Indian health system has evolved over time and by large has been successful at recognizing and responding to the challenges of serving a diverse and very poor population community with health status that is unacceptable by any measure. Significant inroads have been made but improvement is still needed. The lack of adequate funding hampers the quality of care that is provided to American Indian/Alaska Natives. If the Indian health system was provided adequate funding for all services they could focus more on health care quality improvement activities which would ultimately improve the overall level of health care services to Tribal communities.

B. Opening Remarks: On June 4, 2009 a roundtable/teleconference was held with the United South and Eastern Tribes, Inc. (USET) Tribal Leaders and Health Directors to discuss how Indian Country can be engaged in the health care reform efforts and to develop an official position to send forward to Congress. 14 of the 25 USET member Tribes were in attendance in person or via teleconference for the roundtable discussion. This document represents the USET member Tribes' official position regarding several components inherent in the national health reform efforts.

C. Tribal Sovereignty: First and foremost, USET member Tribes believe Indian Tribes are sovereign governments and should be treated as such by the United States. There are several recommendations being discussed that could either affirm or infringe upon the sovereign rights of Indian Tribes (i.e. decisions to serve non-Indians, determining eligibility, etc). USET recommends that the U.S. Congress consider the impacts to Tribal governments and consult with Tribes before imposing any mandates.

D. Discussion: The USET member Tribes conducted a review of all health care reform documents developed by the National Congress of American Indians (NCAI), National Indian Health Board (NIHB), National Council on Urban Indian Health (NCUIH), Area Health Board documents and Congressional committee drafts. The following are founding recommendations:

1. Consult with Tribes across the country to be sure health reform policies and regulations are developed in a way that will create positive changes in the diverse Indian communities.
2. Include Tribal representation on key commissions, boards and other groups created by health reform legislation, and direct the Secretary of Department of Health and Human Services (HHS) to consult with Tribes on health reform policies and regulations.

3. Permit the health status of Indians to be raised to the highest possible level. The Indian Health Service budget must be protected from offsets and must be enhanced to assure that Indian programs can attract and retain health care personnel needed to fulfill the Federal government's trust obligation.
4. Health care reform should require collaboration across all HHS agencies (e.g. Health Resource and Service Administration, Substance Abuse and Mental Health Services Administration, Administration on Aging, Centers for Medicare and Medicaid Services) and programs with Tribes to coordinate health care resources in order to ensure health related funding is more effectively available to Tribes.
5. Extend the new Indian-specific provisions of American Recovery and Reinvestment Act and Children's Health Insurance Program Reauthorization Act to all health programs in which the federal government participates financially.

E. Outcome/Recommendations: The USET member Tribes support the concepts of the NCAI/NIHB/NCUIH position documents and have adopted the following *priority recommendations* as a result of discussions held during the Tribal Roundtable:

1. Clarification of Indian Health Service as "creditable coverage". USET believes it is necessary to clarify the "creditable coverage" entry in the position document prepared by NCAI/NIHB/NCUIH. We believe the point of that entry is that an AI/AN who is eligible for IHS-funded care should not be barred from qualifying for a subsidized premium through an "Exchange" or "Gateway" which offers public subsidies for individuals without actual insurance coverage, and should not be assessed a penalty if he/she does not acquire such insurance coverage. By the same token, however, such an AI/AN's IHS coverage should be considered creditable coverage in order to shield him/her from penalties in the form of added cost (such as a late enrollment penalty) if the AI/AN does not immediately acquire insurance coverage. This is particularly important with regard to an AI/AN who moves away from his/her Indian health system provider's service area and seeks to acquire health coverage through another means such as a subsidized plan or other insurance option.
2. Apply Federal law protections. The protections afforded to Indians regarding their participation in Medicaid should apply to their participation in a health reform insurance plan. This is merely augmenting an existing program to include a broader spectrum of programs. Indians should be exempt from all cost-sharing (including premiums, co-pays, and deductibles), consistent with the recent amendment made to Title XIX by Sec. 5006(a) of P.L. 111-5 for Medicaid.
3. Out of State Medicaid applicability. USET fully supports the proposal of the Senate Finance Committee to require interstate coordination for child Medicaid beneficiaries to ensure that a child's home-state Medicaid program will cover the child's health care costs when he/she is out of state. This proposal should be expanded to require an adult Indian's home-state Medicaid program to cover the health care costs associated with a patient who travels out of state in order to receive culturally competent care at an Indian health facility, including behavioral health needs and substance abuse treatment. USET Tribes continued to battle the issue of cross-border payments. Within the USET area, there are two culturally competent substance abuse treatment facilities, Partridge House (an adult program in upstate New York) and Unity (a youth program in Cherokee, North Carolina). Tribes are forced to limit the number of patients they send to these out-of-state programs due to cost, as state Medicaid will not cover the costs of out-of-state care, even if there are no comparable facilities within the home-state. So extending the Senate Finance Committee proposal to include adult Indian coverage would a great success for the USET Tribes.
4. Medicare amendments. The Medicare laws should be amended to provide 100% payment to the Indian health programs for covered Medicare. At present, the current rate for Medicare

reimbursement is at 80% for regular qualifying services. This would infuse over \$40 million more into the Indian health system annually.

5. Payor of Last Resort. Indian health systems must always remain the payor of last resort.
6. Authority to decide whether to serve non-Indians at a Tribally-operated health facility. Tribes are aware that the demand for health services will greatly increase in a reformed health care environment and Tribes are likely to be asked to open their doors to service non-Indian patients. This is a challenging decision that should be left to the Tribal Governments. To those Tribes who are willing to expand accessibility to health care by serving non-Indians, the legislation must extend the Federal Tort Claims Act coverage now provided to ISDEAA contractors to include coverage for services to non-Indians. This is consistent with the FTCA coverage extended to community health centers which receive funding from HRSA under Sec. 330 of the Public Health Service Act.
7. Health Care Facilities. The quality and capacity of facilities throughout Indian Country differs widely as the IHS construction budget has never kept up with the level of need. Thus, Tribes need the authority to explore innovative ideas for addressing facility needs. Include language from the 110th Congress IHCIA Reauthorization bill (S.1200): Sec 301(f) DEVELOPMENT OF INNOVATIVE APPROACHES. The Secretary shall consult and cooperate with Indian Tribes and Tribal Organizations, and confer with Urban Indian Organizations, in developing innovative approaches to address all or part of the total unmet need for construction of health facilities, that may include: (1) the establishment of an area distribution fund in which a portion of health facility construction funding could be devoted to all Service Areas; (2) approaches provided for in other provisions of this title; and (3) other approaches, as the Secretary determines to be appropriate.
8. Workforce. Indian health programs already have a difficult time recruiting and retaining needed health care professionals. Competition for health care workforce personnel will intensify as millions of individuals become insured. The IHS budget must be enhanced to assure that Indian programs can attract and retain health care personnel. The legislation should expand the categories eligible for scholarship and loan services, increase funding to train and support alternative provider types with have proven records of providing quality care (i.e. community health representatives, behavioral health and dental health aids, etc.), and establish a mentorship program to increase interest in entering the health professions field.
9. Inclusion of IHCIA provisions within the reform legislation. Since the IHCIA has not yet achieved enactment, Congress should consider including the provisions identified in the NCAI/NIHB/NCUIH position document in any reform legislation.

F. Conclusion: The USET member Tribes appreciate the efforts of the Administration and Congress to include Tribal Governments in the discussion regarding this important issue. The foregoing statements were developed and adopted after careful review of the documents released by NCAI, NIHB, NCUIH, Congressional Committees and other entities. The USET member Tribes welcome the opportunity to work in a consultative and collaborative effort with the Administration and Congress to develop legislation and policies that:

1. Promote the fulfillment of the United States' trust responsibility towards Tribes.
2. Recognize, reaffirm and support the sovereign rights of Tribal Governments.
3. Protect or improve upon existing legislation, rules/regulations and policies that Tribal Governments currently benefit from.